No. 83-1172

In the Supreme Court of the United States

OCTOBER TERM, 1983

ROBERT S. RILEY,

Petitioner,

vs.

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED

1. Whether a court shall apply collateral estoppel where in the prior case a dismissal was entered upon a docket sheet which failed to state the grounds therefor and where the docket entry could be based upon two or more grounds, neither of which are determinable from the docket entry.

2. Whether a state court shall apply the doctrine of collateral estoppel where in the prior federal case no "final" judgment was set forth upon a separate document stating the grounds therefor and where there was no strict compliance with the Federal Rule of Civil Procedure 58(2).

PARTIES AFFECTED

Appellant-Defendant Below: Robert S. Riley

Appellee-Plaintiff Below: International Union of Allied Industrial Workers of America, AFL-CIO, Local 876, By Samuel J. Williams, as President, and Lonnie E. Williams, as Financial Secretary-Treasurer.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Robert S. Riley, respectfully prays that a Writ of Certiorari be issued to review the decision of the Illinois Supreme Court which left standing an opinion of the Illinois Appellate Court for the Fourth District in the above case which is in conflict with opinions of this Court.

OPINIONS BELOW

The Illinois Appellate Court's Opinion was issued under Illinois Supreme Court Rule 23 which provides that such opinions need not be published. After a diligent search for publication, including a telephone call to Pantagraph Publications, the official publisher of Illinois Court Opinions, we concluded that the opinions were not published. The opinions are, however, attached as part of the Appendix.

JURISDICTION

The Illinois Supreme Court denied Robert Riley's Petition for Leave to Appeal in an Order dated October 4, 1983, a copy of which is attached as Appendix D. The Illinois Supreme Court allowed Robert Riley's Petition to Stay or Recall Mandate pending the outcome of this Petition for a Writ of Certiorari in an Order dated November 15, 1983, a copy of which is attached as Appendix D. This Court has jurisdiction under Title 28, Section 1254, United States Code.

FEDERAL RULES INVOLVED

28 USC 58(2)

Rule 58. Entry of Judgment

Subject to the provisions of Rule 54(b): . . . . (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of

the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963.)

STATEMENT OF THE CASE

Robert S. Riley is an employee of the Archer Daniels Midland Company ("ADM") located in Decatur, Illinois and a member of the International Union of Allied Industrial Workers of America, AFL-CIO, Local 876 ("AIW").

The AIW called a strike against ADM on February 8, 1980 and established picket lines near ADM. From February 22, 1980 to May 19, 1980 Robert S. Riley crossed the picket line and worked for ADM.

Mr. Riley was served with notice on September 27, 1980 that he would be tried by a trial committee of the AIW on September 30, 1980. Subsequently, the AIW notified Mr. Riley on October 1, 1980 that the trial was continued to October 6, 1980. On October 6, 1980 the AIW conducted its trial of Mr. Riley in his absence, and found him in violation of Article 32.04 the Union Constitution prohibiting "working in an establishment where a sanctioned strike is in progress, or returning to work during a sanctioned strike." The AIW fined him $64.00 per day, or $6,400.00, for a period of one hundred days. Article 32.02 requires that the trial is "to take place not less than ten (10) nor more than fifteen (15) days after the receipt of such notice. . . ." Mr. Riley was notified of the findings of the trial on or about November 3, 1980. Mr. Riley appealed

from these findings, using the Union's internal appellate procedures until he had exhausted the statutory time limit of four months for such appeals. 29 U.S.C. Sec. 411(a) (4) (1959).

On July 13, 1981 Mr. Riley filed suit against the AIW in U.S. District Court alleging inter alia, that the AIW had failed to give him adequate notice of the trial, that it failed to give him sufficient time to prepare his defense, and that its trial committee was prejudiced against him thereby failing to give him a fair trial, and that, if proved, such allegations would be in violation of 29 USC 411(a) (5) (A, B, & C).

The AIW filed a motion to dismiss arguing a lack of jurisdiction due to Mr. Riley's failure to exhaust his administrative remedies and failure to state a claim upon which relief may be granted. On December 7, 1981 the U.S. District Court made the following docket entry:

> The Court has again examined the file. Attorney for Plaintiff has not filed any further response to Defendant's Motion to Dismiss. It appears that said motion is well taken and therefore this case must be dismissed.
>
> CAUSE DISMISSED (Ackerman, T.)

No judgment on a separate document was ever entered. Except for this brief statement, no other explanation for this docket entry from the U.S. District Court is known.

Two weeks later, the AIW filed suit in the Circuit Court of Illinois for the Sixth Judicial District in Union County seeking to enforce its fine. Against this suit, Mr. Riley interposed as a counter claim the violations of 29 U.S.C. 411(a)(5) (A, B, & C) which he had alleged previously in his suit in U.S. District Court. The AIW responded with a motion to dismiss the counter claim on three grounds: 1) lack of jurisdiction, 2) collateral estoppel, and 3) pleading

conclusions of law. In support of the collateral estoppel argument, the AIW attached a certified copy of the docket sheet for Mr. Riley's case which he had filed as case Number 81-3216 in the U.S. District Court for the Central District of Illinois together with a copy of the Complaint and the AIW's motion to dismiss. On February 18, 1982 the AIW filed a motion for summary judgment supported by affidavits and the deposition taken of Mr. Riley during his federal case. In that deposition Mr. Riley admitted that he had crossed the picket lines for approximately 80 days during the strike, but asserted that he did so only after being harassed by AIW officials. The Circuit Court of Illinois entered a Written Judgment Order which found in pertinent part that it failed to state a cause of action and that it should be estopped because of the U.S. District Court's action with regard to the claims.

Mr. Riley then appealed to the Appellate Court of Illinois for the Fourth Judicial District. In his brief he argued that the application of collateral estoppel was an error which should be reversed because there had been no ruling on the merits in the U.S. District Court and that the summary judgment, since it was entered when there were still issues of material fact at issue, was entered in error. The Appellate Court affirmed, and went on to deny Mr. Riley's petition for a rehearing and for a Certificate of Importance to the Illinois Supreme Court.

His remedies before the Appellate Court exhausted, Mr. Riley then petitioned the Illinois Supreme Court on November 7, 1983 for leave to appeal. His petition was denied on October 4, 1983 and mandate issued on the 26th of the same month. He petitioned the Illinois Supreme Court to Stay or Recall its mandate and therein alleged

that there was no final judgment in the U.S. District Court because no judgment on a separate document was ever entered pursuant to Federal Rule of Civil Procedure 58(2). The Petition to Stay or Recall Mandate was granted and this Petition for a Writ of Certiorari ensues.

EXISTENCE OF JURISDICTION BELOW

The Circuit Court of Illinois had jurisdiction over Mr. Riley's federal counter-claims pursuant to the principles of concurrent jurisdiction as outlined in the Appellate Court of Illinois for the fourth Judicial District's opinion, attached hereto as Appendix C.

The U.S. District Court is granted jurisdiction over Mr. Riley's claims pursuant to 29 USC 411(a)(4) and continues to have jurisdiction over his claims until the provisions of 28 USC 58(2) are met so that an appeal may be taken therefrom.

REASONS FOR GRANTING WRIT

A.

By refusing to grant Robert Riley's petition for Leave to Appeal, the Illinois Supreme Court left standing an Illinois Appellate decision which decides an important federal question in a manner inconsistent with applicable decisions of this court, other state courts of last resort and other federal appellate courts. The issue presented, moreover is an issue which this court should decide so as to lend certainty to the application of the doctrine of collateral estoppel and to remind the courts of this country of the principle it announced more than a century ago in the case of *Russel* v. *Place* (1876) 94 US 606 at 608, 24 L. Ed. 214.

This court in 1876 pronounced the rule that if a judgment might be "based upon one or more of several grounds, then none of them are conclusively established under the doctrine of collateral estoppel, since it is impossible for another court to tell which issue or issues were adjudged by the rendering court."[1] *Russel* v. *Place op. cit.; Happy Elevator No. 2* v. *Osage Construction Co.* (CA 10th, 1954) 209 F.2d 459 at 462; *Beronio* v. *Ventura County Lumber Co.* (1900) 129 Cal 232 at 236, 61 P 958, 79 Am. St.Rep. 118.

The recent decisions of this court justly extol the virtues of the doctrine of collateral estoppel: "collateral estoppel relieves parties of the cost and vexation of multiple

[1] Quote taken from 1.B. Moore's Fed. Prac. 778; see his citations of authority in n.15 there; also see p. 782 and p. 789 for further statements on the rule.

lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Kremer* v. *Chemical Construction Corporation*, 456 US 461, 72 L.Ed.2d 262, 102 S.Ct. 1883, reh den (US) 73 L.Ed.2d 1405, 103 S.Ct. 20; *Allen* v. *McCurry*, 449 US 90, 66 L.Ed.2d 308, 101 S.Ct. 441; *Montana* v. *United States*, 440 U.S. 147, 59 L.Ed.2d 210, 99 S. Ct. 970. In the cases just cited, this court imposes the limitation upon the doctrine that the parties have a fair, impartial and equal opportunity to litigate the issues; in short, the prior adjudication must meet general due process requirements. Other limitations, however, are necessary, for the doctrine, if misunderstood and misapplied, can very easily result in substantial individual injustice. In *Moore's Federal Practice* it is stated:

> These requirements play an important role in limiting collateral estoppel to its proper function, and preventing its expansion into a trap for the unwary, or even the reasonably cautious, litigant or lawyer. As we point out elsewhere, unless properly limited, collateral estoppel can easily produce individual injustice. 1.B. Moore's Fed. Prac. 788.

This case presents this court with an opportunity to delineate precisely an important limitation to the doctrine of collateral estoppel thereby preventing substantial individual injustice in the future.

B.

Federal Rule of Civil Procedure No. 58(2) is a jurisdictional rule. By placing the judgment on a separate document and, afterwards, entering it upon the docket, a judgment becomes "final", i.e. "appealable". The judicial act of judgment followed by the ministerial act of entry upon the docket marks the end of the trial court's jurisdiction;

and, if an appeal is timely filed, the beginning of appellate court jurisdiction. 6A Moore's Fed. Prac. 58.02 and authorities cited therein and in Appendices A and D. Because of its jurisdictional nature, failure to follow this rule may be raised at any time or by the court, *sua sponte*. By analogy from *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan* (1884) 111 US 379, at 382, 4 S.Ct. 510, 28 L.Ed. 462.

It follows from the jurisdictional nature of this rule that, although strict compliance may be waived (*Bankers Trust Co.* v. *Mallis*, N.Y. 1978, 98 S. Ct. 1117, 435 US 381, 55 L.Ed.2d 357 reh.den. 98 S.Ct. 2259, 436 US 915, 56 L.Ed. 2d 416), absent express or implied waiver, a judgment is not "final" until strict compliance with Fed. Rul. Civ. Pro. 58(2) obtains. Since the application of collateral estoppel requires a final judgment, it follows that where strict compliance with Fed. Rul. Civ. Pro. 58(2) is absent, collateral estoppel cannot and should not be applied.

Although in Illinois State Courts, a final judgment may be entered only through a docket entry, in federal courts rule 58(2) sets forth a different definition of "finality" for judgments, by its requirement that judgments first be set forth on a separate document. Thus, when a state court adopts its own definition of judgment finality in applying collateral estoppel, rather than applying the federal definition, (when the prior case was a federal case), the state court, in effect, uses state procedural rules to deprive a United States citizen of his federally protected rights. This court in *Dice* v. *Akron, Canton, Youngstown Railroad Company*, (1952) 342 U.S. 359, 96 L.Ed. 398, 72 S.Ct. 312 stated that it would not permit state courts to deprive a U.S. citizen of his federally protected rights through state procedural means.

This court has never considered the question of whether a judgment which fails to strictly comply with Federal Rules of Civil Procedure 58(2) is "final" for purposes of collateral estoppel and this case presents this court with an opportunity to decide the question, and at the same time to reaffirm its decision in *Dice* v. *Akron*, op. cit.

CONCLUSION

For the reasons stated above, your petitioner respectfully prays that this court grant his petition for a Writ of Certiorari.

Respectfully submitted,

/s/ Dean M. Trafelet

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT, SPRINGFIELD DIVISION

ROBERT RILEY,	)	
Plaintiff,	)	
vs	)	NO. 81-3216
ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876,	)	
Defendant.	)	

MOTION TO DISMISS

COMES NOW the Defendant, ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876, by its Attorneys, RONALD L. CARPEL, LTD. pursuant to Rule 12 of the Federal Rules of Civil Procedure, moves this Court to dismiss the Plaintiff's, ROBERT RILEY, complaint and in support thereof states as follows:

1. That the complaint fails to state a cause of action and that the Plaintiff has failed to attach a copy of the International Constitution which document is the basis of this action.

2. That the Honorable Court lacks jurisdiction over the subject matter of this cause of action in that the Plaintiff has failed to exhaust his internal union remedies as required under 29 U.S.C. § 411 (a)(4).

WHEREFORE, The Defendant, ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876, moves this Court for an order dismissing the Plaintiff's, ROBERT RILEY, complaint with prejudice, at cost to the Plaintiff.

ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876, Defendant
BY: RONALD L. CARPEL, LTD.
BY */s/ Ronald L. Carpel*
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT, SPRINGFIELD DIVISION

ROBERT RILEY, Plaintiff,	)	
vs	)	NO. 81-3216
ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876, Defendant.	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO DISMISS

COMES NOW, the Defendant, ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876 and for its Memorandum in Support of its Motion to Dismiss filed herein, states as follows:

The Defendant sets forth a brief summary of the facts. The Plaintiff prior to, and at all times mentioned in this matter, was a member of the Defendant Union, Local 876 and subject to the terms of the Constitution of the International Union.

That on September 25, 1980, the Plaintiff was served with a letter which indicated that he had been charged by the Defendant Union with numerous violations of the Defendant's rules as set forth in the International Constitution alleging that the Plaintiff had crossed picket lines and worked for Archer Daniels Midland Company during a duly authorized strike against that company. The letter

set forth the Plaintiff's rights under the Constitution, and specifically advised the Plaintiff that his failure to appear at the hearing could be construed as an admission of guilt. The letter also advised the Plaintiff that the trial would be held on September 30, 1980 and designated the time and location of the said trial. The Plaintiff was also furnished a copy of the Defendant Union's Constitution. These documents, except for the International Constitution, were attached to the Plaintiff's complaint as group Exhibit B.

On September 28, 1980, the Plaintiff was advised by letter that the trial had been postponed to October 6, 1980, to comply with the Defendant's Constitution which required that a trial for violations of union rules be conducted between ten and fifteen days after service of notice and charges upon the member. This letter is also included in the Plaintiff's complaint in group Exhibit B.

On October 6, 1981, the trial was called to order at the time and place stated in the notices to the Plaintiff. The Plaintiff was called three times by the Chairman and failed to appear. The trial was adjourned for a period of thirty (30) minutes during which time the Chairman attempted to call the Plaintiff on three separate occasions to determine if the Plaintiff would attend the trial. The Chairman was unable to reach the Plaintiff by telephone and the trial reconvened with evidence heard and a subsequent finding of guilty on five of the eight charges pending against the Plaintiff. A fine of $64.00 per day for each of the 100 days the Plaintiff worked during the strike was recommended and subsequently approved by the membership.

The Plaintiff was notified of the decision and fine by a notice dated November 3, 1980. This notice is attached to the Plaintiff's complaint as Exhibit A.

On December 10, 1980, the Plaintiff sent a letter to the International Union indicating his intent to appeal the fine to the International Union Executive Committee pursuant to Article 19 of the Union Constitution, a copy of which is attached to Plaintiff's complaint as Exhibit E.

Subsequently, on February 2, 1981, the Plaintiff, in a letter to the International Union, set forth his reasons why the fine against him should be reversed. This letter is attached to the Plaintiff's complaint as Exhibit G. In a letter dated June 30, 1981, the Plaintiff was notified that the Executive Board had denied his appeal and concurred in the findings of the trial committee. This letter is attached to the Plaintiff's complaint as Exhibit H.

The Defendant contends that this Honorable Court should refuse to take jurisdiction in this matter as the Plaintiff has failed to exhaust his internal union remedies as required under 29 U.S.C. § 411 (a)(4) which states, in part, as follows:

> "(4) Protection of the right to sue. No labor organization shall limit the right to any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, *That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof.* (Emphasis Added)

ARGUMENT

The Plaintiff states in his complaint that he has been, and is, a member of the Defendant local union. As a member of the Defendant union the Plaintiff has agreed to be bound by the Constitution of International Union and Laws governing Local Unions hereafter referred to as the "Constitution". This "Constitution", among other things, details the rights of a member who is charged with violating union rules and the basis of charges against a member, in addition to the trial and appeals procedure afforded the member. The Plaintiff alleges in his complaint that the Defendant has violated his rights but has refused to attach to this complaint a copy of the "Constitution", which establishes those rights. The Defendant contends that the "Constitution" is a necessary document and is, in effect, the basis of the Plaintiff's complaint. The failure of the Plaintiff to attach a copy of the "Constitution" renders the complaint defective.

The allegations in the Plaintiff's complaint clearly reflect that the Plaintiff failed and refused to attend or participate in his trial before the trial committee. The Defendant maintains that the Plaintiff's failure to participate in his trial constitutes a waiver of his right to a trial on the matter. The Defendant further maintains that because the Plaintiff has elected to waive his right to a trial, he should then not be allowed to come before this Court and claim that he has exhausted his inter-union remedies which is a condition precedent to seeking relief before this Court.

The doctrine of waiver is certainly not a new concept to the judicial system. The case of *Lichter* v. *United States*, 334 U.S. 742, 92 Led 1694 (1948), while not involving a

dispute between a union and its members, clearly sets forth the law whereby a person may not waive a right and later claim he was not afforded the right.

The *Lichter* case involved the recovery by the United States for excessive profits made by the Plaintiff's during the war in violation of the Renegotiation Act. Under the Act, the War Controls Price Adjustment Board had the power to determine if excessive profits had been made and further the power to order restitution. The Act indicated that parties aggrieved by the decision of the Board had to take their appeals to the Tax Court. The Plaintiff companies in that matter did not so appeal, but immediately brought the matter before the United States District Court. The Supreme Court affirmed the District Court's refusal to hear the matter because the Plaintiffs had refused to take the matter before the Tax Court. The Supreme Court indicated that a person cannot claim he was given a hearing when the facts clearly show that the person did not avail himself of the opportunities afforded for such a hearing.

The doctrine of waiver was further supported in the case of *Ritz* v. *O'Donnell*, 566 F2d 731, (1977). In *Ritz*, the Plaintiff knowingly failed to exercise certain rights available to him during a disciplinary hearing before his union. The Court states that "Courts have also uniformally declared that union members who knowingly fail to exercise rights guaranteed or afforded them in connection with union disciplinary proceedings have waived those rights."

It is the Defendant's position that if a union member may waive his rights within a disciplinary hearing, he may likewise waive his right to the disciplinary hearing itself if the union member fails and refuses to participate

in that hearing. The Plaintiff in the matter before this Court should not be allowed to claim that he has exhausted his inter-union remedies when he has not availed himself of those remedies by his failure to attend at the trial hearing.

The case of *Shernoff vs. Schimel* 106 N.Y.S. 2d 505 (1951), dealt precisely with the question as to whether an aggrieved union member could claim to exhaust his inter-union remedies and thus bring his matter before a Court of law when the union member failed to participate in the inter-union procedures afforded him. In the *Shernoff* case, the Plaintiff came before the Court seeking a temporary injunction to restrain the defendant union from refusing to recognize the Plaintiff as a member of that union. The Plaintiff union member had declined to participate in the appeal proceedings before the Joint Executive Board, indicating that he had not previously received a fair trial. The Joint Executive Board indicated that the Plaintiff union member should have an opportunity for a trial and ordered the local union to conduct a retrial so that there was no question as to affording the Plaintiff union member every possible safeguard and protection.

The Plaintiff union member again refused to participate in the local trial after he had received due notice of the time and place of the trial and was advised fully of his rights therein. The Plaintiff union member was again found guilty of the charges against him and was so advised. In addition, the Plaintiff was given notice that he could present his case before the full membership and again refused to appear to present his case before that body. The Plaintiff then brought another application for temporary injunction before the court seeking reinstatement as a union member. The court indicated that the

Plaintiff union member had made no serious effort to exhaust his remedies within the framework of the union and thus he had not exhausted his rights within the union framework and did not qualify for injunctive relief before the court.

In addition to the Plaintiff's failure to participate in the trial proceedings at the local level, the Plaintiff has failed to exhaust all his inter-union remedies by his failure to appeal to the International Convention as set forth in Article 19.3 which states as follows:

> "The International Executive Board shall act upon such appeal at its next regular meeting or at a special meeting called for such purpose, and it shall notify the parties interested of the date on which the appeal is to be considered, and such parties may in the discretion of the International Executive Board be afforded the right to appear and present argument. The International Executive Board may affirm, reverse, or modify the action, decision, or penalty appealed from or may refer the matter back to the local union for further proceedings in accordance with the directions of the Internation Executive Board. Any *subordinate body or member thereof aggrieved by the action of the International Executive Board shall appeal to the convention of the International Union by serving notice of appeal on the International Union and filing supporting statements within sixty (60) days after such decision is rendered.*" (Emphasis Added)

The case of *Forline* v. *Helpers Local No. 42*, 211 F. Supp. 315 (E. A. Penn. 1962) is cited by the Defendant as additional support for its contention that the Plaintiff has failed to exhaust his inter-union remedies and that the question of exhaustion of remedies is one which can be decided in a motion to dismiss.

In *Forline*, the United States District Court for the Eastern District of Pennsylvania was again faced with the matter as to whether the aggrieved union members had exhausted their interunion remedies prior to seeking the jurisdiction of the Court. The defendant union, in that case, asked for a motion to dismiss claiming that the Plaintiffs had failed to exhaust the remedies available to them under the Constitution and By-Laws of the defendant union. The Plaintiffs cited the case of *Detroy* v. *American Guild of Variety Artists*, 286 F.2d 75 (2d Cir. 1961) as justification for their failure to exhaust union remedies. The Court in *Detroy* stated that based on the language set forth in 29 U.S.C. 411 (a)(4), the requirement of exhaustion was not absolute but a requirement which may be imposed by the Court depending on the factual basis set forth. The court in *Forline* stated that the legislative and judicial policies that underline the requirement of exhaustion of union remedies were stated in *Detroy* at page 79 as follows:

> "The congressionally approved policy of first permitting unions to correct their own wrongs is rooted in the desire to stimulate labor organizations to take the initiative and independently to establish honest and democratic procedures."
>
> "The possibility that corrective action within the union will render a member's complaint moot suggests that in the interests of conserving judicial reserves, no court step in before the union is given its opportunity."

The court in *Forline* indicated that to effectuate the policies previously set forth in the *Detroy* case "the issue of exhaustion of remedies should be disposed of as early in the proceedings as practicable. In appropriate cases, it may be determined preliminarily upon motion, but it cannot be presumed in a vacuum. Where a union moves to dismiss

the complaint, it should place before the Court facts establishing that the union remedies are available to the Plaintiff and the Plaintiff has neglected to use them."

The Plaintiff, in his complaint, states that he did appeal to the International Executive Board. However, the Plaintiff fails to state that he has attempted to appeal the matter to the Convention of the International Union which convention is due to convene on August 29, 1981.

The Defendant further maintains that the Plaintiff may not claim to have exhausted his inter-union remedies when he has failed to appeal his case to the International Convention which is scheduled to meet in the very near future.

The Defendant maintains that this court may determine on a motion to dismiss if the Plaintiff has exhausted his inter-union remedies as required under 29 U.S.C. 411 (a)-(4), which exhaustion of the said inter-union remedies is a condition precedent to the invocation of the jurisdiction of this Court.

It is clear that the Plaintiff has waived his right to a trial before the local union on this matter by his failure and refusal to participate in the local trial. Based upon his failure and refusal to participate in the local trial, the Plaintiff cannot claim to have exhausted his inter-union remedies as required by the Statute.

It is further clear from the facts set forth above that the plaintiff also failed and refused to appeal the decision of the local union to the International Convention. The Convention is due to convene in the very near future and such failure and refusal to appeal to the Convention also constitutes a failure on the part of the Plaintiff to exhaust his inter-union remedies as required by the statute.

Finally, the Plaintiff has failed and refused to attach a copy of the International Constitution which document is necessary and essential to the Plaintiff's cause of action.

In view of the Plaintiff's failure to exhaust his inter-union remedies as required under 29 U.S.C. 411 (a)(4) and his failure to attach a copy of the International Constitution the Defendant moves this court for an order dismissing the Plaintiff's complaint with prejudice at costs to the Plaintiff.

Respectfully submitted,

Ronald L. Carpel, Ltd.

By */s/ Ronald L. Carpel*
Attorneys for Defendant
Allied Industrial Workers Union
Of America, Local 876,
Defendant

PROOF OF SERVICE

The undersigned attorney certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties who have appeared in the above cause by enclosing the same in an envelope addressed to such attorneys at their business address, with postage fully prepaid, and by depositing said envelope in a United States Post Office Mail Box in Dec., Illinois on the 31 day of July, 1981.

/s/ (signature illegible)

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT, SPRINGFIELD DIVISION

ROBERT RILEY, Plaintiff,	)	
vs	)	NO. 81-3216
ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876, Defendant.	)	

AMENDMENT TO DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
(Filed August 14, 1981)

Comes Now, the Defendant, Allied Industrial Workers Union Of America, Local 876 and for its Amendment to its Memorandum in Support of its Motion to Dismiss previously filed states as follows:

1. That in the first paragraph of Page 8 of the Defendant's Memorandum, the Defendant makes reference to the International Convention, which was due to convene on "August 29, 1981."

2. That the date referred to as August 29, 1981 is incorrect, and that the correct date should read "August 24, 1981."

3. That the remainder of Defendant's Memorandum is correct in all respects except for the change in the date as set forth above.

Respectfully submitted,

Ronald L. Carpel, Ltd.

By /s/ *Ronald L. Carpel*
Attorney for Defendant
ALLIED INDUSTRIAL WORKERS
UNION OF AMERICA, LOCAL 876,
Defendant

PROOF OF SERVICE

The undersigned attorney certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties who have appeared in the above cause by enclosing the same in an envelope addressed to such attorneys at their business address, with postage fully prepaid, and by depositing said envelope in a United States Post Office Mail Box in ....., Illinois on the 31 day of July, 1981.

/s/ (*signature illegible*)

8-22-81 Clerk to notify atty for pl of the requirements of local rule 12. Rule on pl to file response within 7 days. Failure to do so will be taken as a confession..... ....

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT, SPRINGFIELD DIVISION

ROBERT RILEY,	)	
Plaintiff,	)	
vs.	)	No. 81-3216
	)	
ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876,	)	
Defendant.	)	

ANSWER TO MOTION TO DISMISS

Now comes the plaintiff, Robert Riley, by one of his attorneys, Murray B. Woolley, and in answer to the defendant's Motion to Dismiss states as follows:

1. That the complaint does state a cause of action under Chapter 29 U.S.C. §§411(a) (1) (2) (5) (c) 412 and 529, all being under the Labor Management Reporting and Disclosure Act; that the plaintiff failed to attach a copy of

the Constitution of the International Union, but that said inadvertent failure is not of consequence in that he has stated sufficient allegations in support of his Complaint under the L.M.R.D.A.

2. That the plaintiff has exhausted his internal union remedies pursuant to paragraph of his Complaint, which among other things states that his first appeal was dated December 15, 1980 and the last response that he received from the International Union was June 30, 1981; under the circumstances since he has pleaded appeals of his fine to the International Union covering a period of more than six months, he has satisfied the requirements of the law that he exhaust his internal union remedies.

WHEREFORE, the plaintiff, Robert Riley, moves this Court for an Order denying the defendant's Motion to Dismiss at the costs of the defendant.

Robert Riley,
Plaintiff

By: .....
Murray B. Woolley
One of His Attorneys

DOCKET SHEET

1981

7/13/81 Complaint.

7/13/81 Summons w/USMarshal Form and one copy issued to USMarshal for service.

7/17/81 Summons, ret. exec. on International Union cert. mail by USM 7/16/81.

8/ 3/81 (Deft.) Motion To Dismiss.

8/ 3/81 (Deft.) Memorandum In Support Of Defendants Motion To Dismiss.

8/ 3/81 (Deft.) Motion To Strike.

8/ 6/81 (Deft.) Memorandum In Support Of Defendants Motion To Strike. LV

8/14/81 (Deft.) Amendment To Defendant's Memorandum In Support Of Motion To Dismiss.

8/22/81 Clerk to notify Atty. for pltf. of the requirements of Local Rule 12. Rule on pltf. to file response within seven (7) days. Failure to do so will be taken as a confession of the pending Motions. (Ackerman, J.) Copy of d/e mailed to parties w/copy of Local Rule 12.

8/31/81 Letter from Atty. Murray B. Woolley, counsel for pltf. request extension of time to and including Sept. 4, 1981.

9/ 1/81 Letter from Atty. Ronald L. Carpel, counsel for deft. in opposition to pltfs. letter requesting extension of time.

9/ 1/81 Although the point made by Atty. Carpel in his letter in opposition is not without merit, nevertheless the Court Allows this Motion to extend time to and including Sept. 4, 1981. (Ackerman, J.) Copy of d/e mailed to parties.

9/ 4/81 (Pltf.) Answer To Motion To Dismiss.

9/ 4/81 Memorandum In Support Of The Plaintiff's Opposition To The Defendant's Motion To Dismiss.

9/ 4/81 (Pltf.) Answer To Defendant Union's Motion To Strike.

9/ 4/81 Memorandum In Opposition To Defendant's Motion To Strike.

9/14/81 Hearing on all pending motions set for Tuesday, November 10, 1981 at 2:30 p.m. Atty. Carpel to notify parties.

11/10/81 Notice of Hearing.

11/10/81 Cause called for hearing on all pending motions. Attorney Ronald Carpel appears for defendants. No one appears for plaintiff. Attorney Murray Woolley contacted telephonically by the court. Attorney Woolley said he received notice of the hearing, could not appear and stands on his memos already filed. Arguments of Defendant attorney heard. Leave granted to counsel for the defendant to file a copy of the union constitution as part of the record. Leave granted to counsel for the defendant to file Plaintiff's deposition in support of his motion to dismiss. Ruling reserved at this time. Rule on Plaintiff to respond if desired in accordance with Rule 12 and Rule 56, F.R.C.P., within 21 days. (Ackerman, J.).

Docket entry mailed to attorneys.

11/10/81 Deposition of Robert Riley taken Sept. 8, 1981, filed.

12/ 7/81 The Court has again examined file. Atty. for pltf. has not filed any further response to deft's motion to dismiss. It appears that said motion is well taken and therefore this case must be dismissed. Cause Dismissed. (Ackerman, J.) Copy of d/e mailed to parties.

12/ 7/81 Case Closed.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT, SPRINGFIELD DIVISION

ROBERT S. RILEY, Plaintiff,	)	
vs.	)	No. 81-3216
ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876, Defendant.	)	

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

(Filed November 4, 1983)

NOW COMES the Plaintiff, ROBERT S. RILEY, by and through his attorneys, ABRAMS, GOMBERG & REESE, LTD., and respectfully moves this Court for leave to file a First Amended Complaint. In support of this Motion, Plaintiff states as follows:

1. On July 17, 1981, the Plaintiff filed his Complaint in the above captioned cause, by and through different counsel.

2. On November 10, 1981, with Plaintiff's Counsel absent, a hearing was held on Defendant's Motion to Dismiss and Plaintiff's Motion to Strike.

3. On December 7, 1981, there was entered a docket entry dismissing the cause which was silent as to the reason and grounds therefor. The Union's Motion to Dismiss was based upon two grounds: 1) lack of jurisdiction for failure to exhaust administrative remedies and 2) failure to state a claim upon which relief can be granted.

4. On December 22, 1981, the Union filed a Complaint in the Illinois Circuit Court of Macon County seeking enforcement of a $6,400.00 fine assessed by a trial committee of the Union, to which Plaintiff raised certain counterclaims alleging the Union's action violated certain federal rights protected by Ch. 29 U.S.C. §411(a)(5)(c).

5. Upon the belief that his federal rights would be adjudicated and protected by the Illinois state courts, the plaintiff obtained new counsel and interposed as a counterclaim to the Union's complaint in Illinois State Court the claim he alleged in the above captioned matter.

6. Federal Rules of Civil Procedure 58(2) states in pertinent part as follows:

> ". . . Every judgment shall be set forth on a *separate document*. A judgment is effective *only when so set forth* and when entered as provided in Rule 79(a)." (emphasis added)

7. Since no judgment set forth upon a separate document was ever entered by this Court in the within cause, no final judgment was ever entered in the within cause of action by this Court pursuant to F.R.C.P. 58(c) and 79(a); see also 1b Moore's Fed.Prac. 723 and *Moore* v. *United States* (C.A. D.C., 1965) 344 F.2d 558; *Fibre Board Paper Products, Coro.* v. *East Bay Union*, (C.A. 9th, 1965) 344 F.2d 300, cert denied (1965) 382 U.S. 826, 86 S.Ct. 61, 15 L.Ed.2d 71 which set forth the rule that a final judgment is necessary before the doctrine of Collateral Estoppel can be properly applied.

8. When a judgment could have been grounded upon more than one alternative ground but does not expressly rely on any one of them, then none is concluded. 1b Moore's Fed. Prac. 729.

9. The Illinois Circuit Court for Macon County erroneously applied Illinois law on when judgments are final and collateral estoppel and dismissed the Plaintiff's Counter claim based upon his federally protected rights and granted the Union summary judgment on July 12, 1982.

10. The Appellate Court of Illinois denied the Plaintiff's appeal from this error on March 17, 1983 and denied the Plaintiff's petition for a rehearing on April 14, 1983, again erroneously applying Illinois rather than Federal law on finality of judgment and collateral estoppel.

11. On October 4, 1983, the Supreme Court of Illinois denied the Plaintiff's petition for leave to file an appeal and mandate issued on October 26, 1983.

12. The United States Supreme Court clearly stated in *Dice* v. *Akron, Conton & Youngstown Railroad Company*, (1952) 342 U.S. 359, 72 S.Ct. 312, 96 L.Ed. 398 that it will not permit state procedural law to deprive a United States Citizen of his federally protected rights.

13. The Plaintiff in good faith intends to petition the United States Supreme Court for a Writ of Certiorari so that he may obtain federal review of the above mentioned errors in Illinois Courts, and has retained counsel therefore.

14. The Plaintiff, in good faith, intends to petition the Illinois Supreme Court to stay or recall its mandate for the above mentioned errors and because he intends in good faith to appeal to the United State Supreme Court, and has retained counsel therefor.

15. Although the Illinois Courts have clearly and obviously erred, Writs of Certiorari are rarely granted by the United States Supreme Court and amendment of Plaintiff's Complaint in this Court may be Plaintiff's last opportunity to have his federally protected rights properly adjudicated.

16. Plaintiff's cause filed in this Court is meritorious.

17. Plaintiff requests a hearing on this motion.

WHEREFORE, Plaintiff respectfully prays this Court to grant him leave to file an amended complaint so that he may have an opportunity to have the merits of his federal claim heard. Or, alternatively, the Plaintiff respectfully prays that this honorable Court refrain from entering judgment and ruling on this motion until such time as as the Plaintiff has exhausted his appeal to the United States Supreme Court and the Illinois Supreme Court has ruled upon the Plaintiff's Petition to Stay or Recall Mandate.

Respectfully Submitted:

_____

ABRAMS, GOMBERG & REESE, LTD.

ABRAMS, GOMBERG & REESE, LTD.
135 South LaSalle Street
Suite 2610
Chicago, Illinois 60603
(312) 372-1981

PROOF OF SERVICE

The Undersigned, being first duly sworn on oath, deposes and states that s/he served copies of the foregoing MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT by mailing copies of same in a properly addressed and stamped envelope and depositing same in the U.S. Mail as follows:

Clerk of the U.S. District Court,
Central District, Springfield Division — 3 copies
P.O. Box 315
Springfield, Illinois 62705

Ronald A. Carpel, Ltd. — 3 copies
132 South Water Street
Suite 538 Milikin Court
P.O. Box 309
Decatur, Illinois 62525

on the 3rd day of November, 1983.

/s/ *David L. Addleton*

SUBSCRIBED AND SWORN to before
me this 3rd day of
November, 1983

/s/ (*signature illegible*)

ABRAMS, GOMBERG & REESE, LTD.
135 South LaSalle Street
Suite 2610
Chicago, Illinois 60603
(312) 372-1981

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT — SPRINGFIELD DIVISION

ROBERT S. RILEY,	)	
Plaintiffs	)	
vs.	)	No. 81-3216
	)	
ALLIED INDUSTRIAL WORKERS	)	
UNION OF AMERICA, LOCAL 876	)	
Defendant	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

(Filed November 4, 1983)

INTRODUCTION

On July 17, 1981, the Plaintiff represented by different counsel, filed his complaint in the above captioned matter. With Plaintiff's counsel absent, a hearing was held on the Defendant's motion to dismiss and Plaintiff's motion to strike. The Union's motion to dismiss was based on two grounds: 1) lack of jurisdiction for failure to exhaust administrative remedies and 2) failure to state a claim upon which relief could be granted. Without stating its reasons therefor, this court on December 7, 1981 caused to be entered upon the docket a notation dismissing the cause.

Subsequently, the Union, the Defendant herein, filed a complaint in the Circuit Court for Macon County, seeking enforcement of its fine assessed by one of the Union's trial committees in the amount of $6,400.00 against Robert Riley, the Plaintiff herein. Against this claim in the Illinois Circuit Court, Robert Riley interposed as a counter claim allegations that the trial, notice thereof and imposition of the fine violated certain federal rights protected by

Ch. 29 U.S.C. Section 411 (a)(5)(c)—in essence, the same claims he alleged in the complaint for this matter in this court.

This motion seeks leave to file an amended complaint. The grounds and reasons for this motion are several and the equities in the case strongly favor allowing the motion. Robert Riley interposed as his counter claim in the Illinois Court the claims he raised before this court because he believed his federal rights would be well protected in the Illinois Courts. He pursued his counter claims in State Court with all the due diligence one could expect of him, appealing the Illinois Circuit Court's erroneous application of Illinois law, rather than federal law on when judgments are "final," and the application of collateral estoppel to his case to the Illinois Supreme Court. Presently, he in good faith intends to apply to the Supreme Court of the United States for a Writ of Certiorari so as to obtain federal review of the treatment his federally protected rights received in the Illinois State Courts. In view of the rules against duplicative actions in different Courts, and his good faith belief that his federal rights would receive the same measure of protection in the Illinois Courts as they would receive in the Federal Courts, and his due diligence in pursuing those rights in the State Court, the Plaintiff cannot be faulted for a lack of due diligence.

ARGUMENT

A. Clear and obvious error occurred in the Illinois State Courts in its application of Illinois law on the finality of judgments rather than Federal law.

Rule 58(2) of the Federal Rules of Civil Procedure provide in pertinent part as follows:

> ". . . Every judgment shall be set forth on a *separate document*, a judgment is effective *only when so set forth*. . ." (Emphasis added)

Appendix I to this memorandum consists of a true and correct copy of the docket sheet for the case of *Robert S. Riley* v. *Allied Industrial Workers Union of America*, U.S. Dist. Ct. No. 81-3216 ("Riley v. Allied"), the case at bar. All the documents filed in this case are numbered serially in the second column. No separate document was ever filed in *Riley* v. *Allied*. Consequently, there is no separate document entitled "judgment" listed in the docket sheet. The only record available of the U.S. District Court's disposition of the case is the docket entry of 12-7-81. A mere docket entry under 58(2) does not qualify as a "separate document".

That a mere docket entry does not qualify as a "separate document" is clear from the language of Rule 58. It requires that *first* the Court approve the form of the judgment submitted to it and *then* that the clerk enter the judgment upon the docket:

> ". . . the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it . . . A judgment is effective only when so set forth *and* when entered as provided in Rule 79(a). F.R.Civ.Pro. 58(2)" (emphasis added).

An effective judgment becomes such only through a two step process: *first*, when set forth upon a separate document; *second*, when entered pursuant to F.R.Civ.Pro. 79(a). The case law is overwhelmingly in accord with this interpretation. *Conrad* v. *Medina*, D.C. Mun.App. 1946, 47 A.2d 562, (Prior to the adoption of this rule, federal courts considered entry of a judgment as a ministerial duty, the lack of which did not affect the validity of the judgment for most purposes). *Taylor* v. *Sterrett*, CA Tex 1976, 527 F.2d 856, (This rule is to mechanically applied). *Virgin Islands National Bank* v. *Tropical Ventures Inc.*, D.C. Virgin Islands 1973, 358 F.Supp. 1203, (Judicial entry

of judgment is the norm rather than entry by the clerk, and departure from the norm is narrowly (restricted). *Levin* v. *Wear-Ever Aluminum, Inc.* C.A. Pa. 1970, 427 F.2d 847, (Provisions requiring every judgment to be set forth on a separate document and entered on a docket of the court are mandatory in all cases). *Associated Press* v. *Taft-Ingalls Corp.*, C.A. Ohio 1963, 323 F.2d 114, (Judgment signed by the court is a "prima facie" judgment in a case rather than a memorandum opinion or docket entry). *Scola* v. *Boat Frances, R., Inc.*, C.A. Mass. 1980, 618 F.2d 147, (An appealable, final decision or judgment must be set forth upon a separate document distinct from the jury verdict or non-jury decision by the Court). *Sasson* v. *U.S.*, C.A. Ga. 1977, 549 F.2d 983, (This rule requires a judgment separate and apart from an accompanying opinion).

The purpose of this rule is to clarify when the time for appeal begins to run. *Bankers Trust Co.* v. *Mallis*, N.Y. 1978, 98 S.Ct. 1117, 435 U.S. 381, 55 L.Ed. 357, rehearing denied 98 S.Ct. 2259, 436 U.S. 915, 56 L.Ed.2d 416; *Scola* v. *Boat Frances, R., Inc.*, op. cit. For this reason, an order tacked onto the end of an opinion will not qualify as a "separate document". *Caperton* v. *Beatrice Pocahontas Coal Coal Co.*, C.A. Va. 1978, 585 F.2d. 683; *Taylor* v. *Sterrett*, op. cit. Consequently, the absence of any separate document setting forth a judgment, except for an unsigned transcript of the court's oral opinion, constitutes a deviation from the requirements of this rule. *W.G. Cosby Transfer and Storage Corp.* v. *Frochlke*, C.A. Va. 1973, 480 F.2d. 498.

The consequences of failure to comply with this rule are consistent with its rationale. Failure to comply is grounds for dismissing an appeal for lack of appellate court jurisdiction. *Nanez* v. *Superior Oil Co.*, C.A. La. 1976, 535 F.2d 324; *Taylor* v. *Sterrett*, op. cit; *Moore* v. *St. Louis Music Supply Co, Inc.*, C.A. Mo. 1975, 526 F.2d. 801; *Chicago*

Housing Tenants Organization, Inc. v. *Chicago Housing Authority*, C.A. Ill. 1975, 512 F.2d 19. Thus, F.R. Civ. Pro. 58(2) is a jurisdictional rule. It establishes the *end* of the District Court's jurisdiction and the *beginning* of the U.S. Appellate Court's jurisdiction. Jurisdictional issues may be raised at any time by any party or by the court *sua sponte*. F.R.Civ.Pro. 12(h)(3).

The conclusion that there was no judgment on the U.S. District Court is inescapable. The rule is mandatory in all cases and is to be mechanically applied. Consequently, and since F.R.Civ.Pro. 58(2) is a jurisdictional rule, this issue may be raised at any time by any party or *sua sponte* by the Court. Since only the docket entry exists to show the U.S. District Court's disposition of the case, and since a docket entry does not qualify as a "separate document", no judgment exists which would support a theory of collateral estoppel. Without a judgment, collateral estoppel cannot apply. Clear and obvious error has occurred, the effect of which is to, by state procedural means, deprive Robert Riley of his federally protected rights. The Supreme Court of the United States has clearly stated in *Dice* v. *Akron, Canton Youngstown Railroad Co.*, (1952), 342 U.S. 359, 72 S.Ct. 312, 96 L.Ed. 398 that it will not permit state procedural law to deprive a United States' citizen of his federally protected rights.

B. The Illinois Courts erred on their application of the doctrine of collateral estoppel.

When a judgment could have been grounded upon more than one alternative ground but does not expressly rely on any one of them, then none is concluded. 16 Moores Fed. Prac. 729. The rule in Illinois is the same and has been stated as follows: The rule of estoppel by verdict (Syn. "collateral estoppel") or res judicata will not be invoked on pure speculation as to the finding of the trial court in

prior litigation. *Lemanski* v. *Lemanski*, 1967, 87 Ill. App. 2d 405, 231 N.E. 2d 191, appeal dismissed, cert. den. 89 S.Ct. 52, 393 U.S. 20, 21 L.Ed.2d 21; rehearing den. 89 S.Ct. 381, 393 U.S. 956, 21 L.Ed. 2d 370.

The docket entry of this court did not state the grounds upon which it was entered. Assuming arguendo that the docket entry was a final judgment, since it did not state the grounds for the dismissal the doctrine of collateral estoppel cannot be applied for it is unclear whether the merits of Riley's claim in the U.S. District Court were ever reached. Indeed, as this court well knows, the merits of Riley's claim were never reached.

In Illinois, although the purpose of the doctrine of collateral estoppel is to prevent a party from litigation the same issue twice, it should not be used to preclude a party from litigating the matter at all. *Gay* v. *Open Kitchens, Inc.*, 1981, 56 Ill.Dec. 258, 100 Ill. App. 3d 968, 427 N.E. 2d 338. Indeed, collateral estoppel will not be applied unless it appears that the party against whom estoppel is asserted had full and fair opportunity to litigate the issue in the prior proceeding and that the doctrine will not result in injustice to the party against whom it is asserted. *Fred Olson Motor Service* v. *Container Corp. of America*, 1980, 37 Ill. Dec. 5, 81 Ill. App. 3d 825, 401 N.E.2d 1098. Thus, even in the application of Illinois law, the Illinois Court erred. The effect of their ruling prevented Riley from producing any evidence of his federal claim, a result of substantial injustice to Riley.

C. Robert Riley used due diligence in prosecuting his federal claim in the Illinois State Courts which he believed would adequately protect his federal rights, thus preventing duplicative actions in two courts; since the United States Supreme Court rarely grants Writs of Certiorari, amendment of his complaint herein may be his last opportunity for a full and fair hearing.

Only days after the docket entry in this case, the Plaintiff was served with summons to the Illinois Circuit Court of Macon County to answer a complaint filed by his union there to enforce its fine. He obtained the present counsel to defend against it. To avoid duplicative actions, and believing his federal rights would be well protected in the state courts, he interposed as his counter claim there, the claims alleged herein. Six months later, on July 12, 1982 judgment was entered against him through the erroneous application of Illinois law, rather than federal law, on the finality of judgments, and the erroneous application of the Illinois doctrine of collateral estoppel to his case. Riley then filed an Appeal of the judgment entered with the Appellate Court of Illinois, 4th District on August 9, 1982. The Appellate Court denied the appeal of Riley on March 17, 1983. On April 14, 1983 the Appellate Court denied Riley's petition for a rehearing and on May 5, 1983 denied his application for a Certificate of Importance to the Illinois Supreme Court. Riley's Petition to Appeal to the Illinois Supreme Court was denied on October 4, 1983. Its Mandate issued on October 26, 1983.

Riley intends to apply to the Supreme Court of the United States for a Writ of Certiorari. These, as is well known, are rarely granted.

Additionally, Riley has petitioned the Illinois Court to stay or recall its mandate, pending disposition of his petition to be filed before the U.S. Supreme Court, and petition to amend his complaint. Thus, it cannot be maintained that Riley has not used due diligence in prosecuting his federal claim. In view of the rules against duplicative litigation, his election to interpose as his counter claim, the within claim, should not be held against him. Although it may be alleged that filing this motion constitutes duplicative actions, at this stage in the proceedings, with only

a costly appeal to the United States Supreme Court left to him under a writ which is rarely granted, such an objection in view of the equities, should not be sustained.

An objection that this motion would, if granted result in duplicative litigation misses its mark. In the Illinois Supreme Court, the Petition to Stay or Recall its mandate is based on document appeal to the U.S. Supreme Court and a clear and obvious error in the application of Illinois law to a federal claim. The Writ of Certiorari to the U.S. Supreme Court will be based upon the clear and obvious error in the Illinois Courts. Here the issue is quite different. Here we are concerned with the equities of Riley's motion to amend his complaint. The focus is upon his due diligence in the State Courts in prosecuting his claim and the fact that, as yet, he has been unable in any forum to reach the merits of his claim. If he were able to pursue the merits of his claim simultaneously in two forums, such an objection might have some weight. But, in this case, it cannot be seriously alleged that the motion would lead to duplicative and potentially contradictory rulings.

CONCLUSION

Robert Riley has been deprived of his rights protected by the Labor Management Relations Disclosure Act. He has asserted these rights, first in a federal forum where no judgment was ever properly entered. When sued by his Union in the Illinois Courts, he raised as a counterclaim those same rights which were never finally adjudicated by the U.S. District Court. The Illinois Courts, without a judgment which would support the doctrine, nevertheless applied collateral estoppel to Robert Riley's counter-claim, a clear and obvious error. The Illinois Court, in applying its own law on when judgments are "final", rather than the federal law, by procedural means deprived Robert Riley of his federally protected rights.

Under these circumstances, where a U.S. citizen has been denied his day in Court at every turn, although zealously and with due diligence pursuing his federal claim, and avoiding duplicative litigation where possible, the equities require granting his motion to file an amended complaint, for this may be his last opportunity to have a full and fair hearing.

Respectfully submitted,

ABRAMS, GOLDBERG & REESE, LTD.
135 South LaSalle Street
Suite 2610
Chicago, Illinois 60603
(312) 372-1981

DOCKET SHEET

7/13/81	Complaint
7/13/81	Summons w/USMarshal Form and one copy issued to USMarshal for service.
7/17/81	SUMMONS, ret. exec. on International Union, cert. mail by USM 7/16/81.
8/ 3/81	(Deft.) MOTION TO DISMISS.
8/ 3/81	(Deft.) MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO DISMISS.
8/ 3/81	(Deft.) MOTION TO STRIKE.
8/ 6/81	(Deft.) MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO STRIKE.
8/14/81	(Deft.) AMENDMENT To Defendant's Memorandum In Support Of Motion To Dismiss.

8/22/81 Clerk to notify Atty. for pltf. of the requirements of Local Rule 12. Rule on pltf. to file response within seven (7) days. Failure to do so will be taken as a confession of the pending Motions. (Ackerman, J.) Copy of d/e mailed to parties w/copy Local Rule 12.

8/31/81 Letter from Atty. Murray B. Woolley, counsel for pltf. request extension of time to and including Sept. 4, 1981.

9/ 1/81 Letter from Atty. Ronald L. Carpel, counsel for deft. in opposition to pltfs. letter requesting extension of time.

9/ 1/81 Although the point made by Atty. Carpel in his letter in opposition is not without merit, nevertheless the Court ALLOWS this Motion to extend time to and including Sept. 4, 1981. (Ackerman, J.) Copy of d/e mailed to parties.

9/ 4/81 (Pltf.) ANSWER To Motion To Dismiss.

9/ 4/81 MEMORANDUM IN SUPPORT Of The Plaintiff's Opposition To The Defendant's Motion To Dismiss.

9/ 4/81 (Pltf.) ANSWER To Defendant Union's Motion To Strike.

9/ 4/81 MEMORANDUM IN OPPOSITION To Defendant's Motion To Strike.

9/14/81 Hearing on all pending motions set for Tuesday, November 10, 1981 at 2:30 p.m. Atty. Carpel to notify parties.

11/10/81 Notice of Hearing.

11/10/81 Cause called for hearing on all pending motions. Attorney Ronald Carpel appears for defendants. No one appears for plaintiff. Attorney Murray Woolley contacted telephonically by the Court. Attorney Woolley said he received notice of the hearing, could not appear and stands on his memos already filed. Arguments of Defendant attorney heard. Leave granted to counsel for the defendant to file a copy of the union constitution as part of the record. Leave granted to counsel for the defendant to file Plaintiff's deposition in support of his motion to dismiss. Ruling reserved at this time. Rule on Plaintiff to respond if desired in accordance with Rule 12 and Rule 56, F.R. C.P., within 21 days. (Ackerman, J.)

Docket entry mailed to attorneys.

11/10/81 Deposition of Robert Riley taken Sept. 8, 1981, filed.

12/ 7/81 The Court has again examined file. Atty. for pltf. has not filed any further response to deft's motion to dismiss. It appears that said motion is well taken and therefore this case must be dismissed. CAUSE DISMISSED. (Ackerman, J.) Copy of d/e mailed to parties.

12/ 7/81 CASE CLOSED.

PROOF OF SERVICE

The Undersigned, being first duly sworn on oath, deposes and states that s/he served copies of the foregoing MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT by mailing copies of same in a properly addressed and stamped envelope and depositing same in the U.S. Mail as follows:

Clerk of the U.S. District Court,
Central District, Springfield Division — 3 copies
P.O. Box 315
Springfield, Illinois 62705

Ronald A. Carpel, Ltd.
132 South Water Street
Suite 538 Milikin Court
P.O. Box 309
Decatur, Illinois 62525

on the 3rd day of November, 1983.

/s/ *David F. Addelton*

SUBSCRIBED AND SWORN to before
me this 3rd day of
November, 1983

/s/ (*signature illegible*)
Notary

ABRAMS, GOMBERG & REESE, LTD.
135 South LaSalle Street
Suite 2610
Chicago, Illinois 60603
(312) 372-1981

APPENDIX B

IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, BY SAMUEL J. WILLIAMS, As President, AND LONNIE E. WILLIAMS, As Financial Secretary-Treasurer, Plaintiffs,	)	
vs.	)	NO. 81-LM-895
ROBERT S. RILEY, Defendant.	)	

JUDGMENT ORDER

NOW ON THIS 12th day of July, 1982, this Cause coming on for hearing upon the Plaintiffs' Motion to Amend Complaint Instanter, Plaintiffs' Motion to Dismiss Counterclaim or in the Alternative to Strike Portions Thereof, and Plaintiffs' Motion for Summary Judgment, the Plaintiffs' present by their attorney, RONALD L. CARPEL, and the Defendant present and by counsel, MURRAY B. WOOLLEY; the Court having considered said Motions, supporting Affidavits and other Exhibits and after hearing arguments of counsel, and being well advised in the premises, FINDS AS FOLLOWS:

1. The Court has jurisdiction of the parties hereto and the subject matter hereof.

2. That Plaintiffs have made a Motion to Amend their Complaint Instanter and Defendant has no objection thereto and said Motion should be allowed.

3. That the Plaintiffs have made a Motion to Dismiss the Amended Counterclaim of the Defendant which prayed for an Injunction and other relief against the Plaintiff.

4. That the Plaintiffs' Motion to Dismiss the Amended Counterclaim should be allowed in that said Amended Counterclaim fails to state a cause of action and further, that the Defendant is collateraly estopped from bringing said Counterclaim in view of the previous dismissal of the case entitled Robert Riley vs. Allied Industrial Workers, Local 876 in Cause No. 81-3216 filed in the United States District Court, Central District, Springfield Division.

5. That Plaintiffs' Motion for Summary Judgment should be allowed in that the Pleadings, Exhibits and Affidavits on file show that there is no genuine issue as to any material fact and the Plaintiffs are entitled to a Judgment as a matter of law.

6. That the Prayer of the Plaintiffs' Motion for Summary Judgment should be allowed and the fine of $6,400.00 levied against the Defendant, Robert S. Riley, should be enforced by Judgment of this Court.

7. That the equities are with the Plaintiff and against the Defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Plaintiffs' Motion to Amend their Complaint Instanter is granted and amendments set forth in said Motion are incorporated by reference in said Complaint.

2. That Plaintiffs' Motion to Dismiss Defendant's Amended Counterclaim is granted and the Defendant's Amended Counterclaim is dismissed and strickened with prejudice.

3. That Plaintiffs' Motion for Summary Judgment is granted and Judgment is entered in favor of the Plaintiffs and against the Defendant, Robert S. Riley, in the sum of $6,400.00, plus costs of suit.

4. That there is no just reason to delay enforcement of this Judgment.

5. Execution may issue.

ENTER:

.....

JUDGE

APPROVED AS TO FORM:

.....

MURRAY B. WOOLLEY, Attorney for
the Defendant, Robert S. Riley

APPENDIX C

NO. 4-82-0506

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, BY SAMUEL J. WILLIAMS, As President, AND LONNIE E. WILLIAMS, As Financial Secretary-Treasurer,

Plaintiffs-Appellees,

v.

ROBERT S. RILEY,

Defendant-Appellant.

Appeal from Circuit Court County of Macon
No. 81LM895
Honorable Donald W. Morthland, Judge Presiding.

(Filed March 17, 1983)

PRESIDING JUSTICE WEBBER delivered the order of the court:

Defendant (Riley) appeals from an order of the circuit court of Macon County which dismissed with prejudice his amended counterclaim and entered summary judgment in favor of the plaintiff (Union). We affirm.

Some background is necessary to an understanding of the issues raised on appeal. The instant complaint was filed in the circuit court of Macon County on December 22, 1981. In it the Union alleged that it had been on strike against Archer-Daniels-Midland Corporation, located at

Decatur, from February 8, 1980, until May 19, 1980; and that Riley had crossed the picket line in violation of the Union's constitution, a copy of which was attached to the complaint. It was further alleged that under the provisions of the constitution Riley was ordered to stand trial before a union trial committee on September 30, 1980, and was so notified of such trial; further, that the trial was continued until October 6, 1980, in order to allow Riley time to prepare his defense. The complaint then alleged that Riley failed to appear at the trial and that the trial committee found him guilty of violating the Union's constitution; the minutes of the committee were attached to the complaint and revealed that Riley was fined by the committee $64 per day for 100 days, being the number of days on which the committee found he had crossed the picket line. The complaint then prayed for enforcement of the fine of $6,400.

On January 18, 1982, Riley filed an answer and counterclaim. In the counterclaim he alleged violations by the Union of certain provisions of a Federal statute known as the Labor-Management Reporting and Disclosure Act, more commonly called the Landrum-Griffin Act (LMRDA). Specifically, he claimed that the notice of trial was inadequate in violation of section 101(a)(5)(B) of LMRDA (29 U.S.C. sec. 411(a)(5)(B)); and that he was denied a fair trial in violation of section 101(a)(5)(C) (29 U.S.C. sec. 411(a)(5)(C)). He further alleged that the trial committee was prejudiced against him and that he had been subjected to continuing harassment which constituted cruel and unusual punishment. His prayer for relief asked dismissal of the Union's complaint and for damages for harassment. Attached as an exhibit to the counterclaim was a letter of appeal by Riley to the International Union and a letter from that body denying the appeal.

The Union filed a motion to dismiss the counterclaim which set up essentially three grounds: (1) lack of jurisdiction in the state court, (2) collateral estoppel, and (3) pleading conclusions of law. In support of the collateral estoppel ground there was attached a certified copy of the docket sheet of the United States District Court for the Central District of Illinois in case number 81-3216, together with copy of the complaint and a motion to dismiss. These documents reveal that on July 13, 1981, Riley filed the suit against the Union for violation of his rights under the LHRDA and service was had upon the Union. Thereafter, in addition to the motion to dismiss, the Union filed a motion to strike, the exact nature of which is not indicated. Memoranda in support of both motions were filed and Riley filed answers to both motions together with memoranda in support of the answers. On November 10, 1981, the cause was called for hearing on all motions. The docket entry of that date indicates that Riley's attorney chose not to appear but to stand on his memoranda already filed. The District Court allowed the filing of Riley's deposition taken September 8, 1981, and granted Riley 21 days in which to make response.

On December 7, 1981, the District Court made the following docket entry:

> "The Court has again examined file. Atty. for Pltf. has not filed any further response to deft.'s motion to dismiss. It appears that said motion is well taken and therefore this case must be dismissed. CAUSE DISMISSED. (Ackerman, J.)"

The copy of the motion to dismiss in the District Court indicates that its grounds were: (1) failure to state a cause of action, and (2) Riley's failure to exhaust his internal union remedies as required by section 101(a)(4) of the LMRDA. 29 U.S.C. sec. 411(a)(4).

To summarize to this point: Riley sued the Union on an LMRDA complaint in Federal court in July 1981 and was dismissed in December 1981; two weeks later the Union filed the instant suit in state court, and Riley set up as a counterclaim essentially the matters on which he had previously sued.

On February 18, 1982, the Union filed a motion for summary judgment supported by affidavits and Riley's Federal deposition. In that deposition Riley admitted that he crossed the picket line but asserted that he did so only after being harassed by Union officials over a nonexistent petition which he allegedly circulated asking others to return to work. He stated that after returning to work he worked approximately 80 days during the strike. He admitted that on September 27, 1980, he received a certified letter of notice of the trial that was to take place on September 30, 1980. He knew that this was contrary to the Union constitution so he refused to attend. He also stated that he got a letter on September 29, 1980, stating that the Union had violated the constitution and therefore the trial was moved back to October 6, 1980. He felt that the trial committee was stacked against him since several members had harassed him regarding the nonexistent petition. However, he did not notify the trial committee that he thought the trial was improper and he would refuse to attend. He stated that he would have appeared if the trial had been constitutional and if he could have been represented by an attorney. He stated he believed he could not be so represented. Further he said that even counting from September 27, 1980, there were only nine days between the time he received notice and the time of the trial. Finally he testified that he appealed to the International with counsel's advice. However, he stated that he did not appeal to the International convention which was held in

August 1981. He stated that he did not know that he could so appeal although he did admit that he had a copy of the Union constitution which reveals that such an appeal is a necessary step in exhausting internal union remedies. He admitted that a hand delivered copy of the charges was received by him on September 25, 1980.

On March 1, 1982, Riley, without leave of court, filed an amended counterclaim, alleging essentially the same matters as appeared in the original counterclaim but adding that the Federal suit was dismissed for failure to exhaust internal union remedies. The Union filed a motion to dismiss or to strike the amended counterclaim on the same grounds as in its original motion. Riley answered the motion, alleging that collateral estoppel did not apply. He also filed an answer to the motion for summary judgment, stating that he had good reason for crossing the picket line as stated in his affidavit. However, the affidavit does not appear in the record.

On July 16, 1982, the trial court entered a written judgment order which found: (1) that it had jurisdiction; (2) that the Union be allowed to amend its complaint without objection; (3) that the motion to dismiss the amended counterclaim be allowed because (a) it failed to state a cause of action, and (b) Riley was collaterally estopped by the dismissal of the Federal action; and (4) that the Union's motion for summary judgment be allowed. The court thereupon entered judgment in favor of the Union and against Riley in the sum of $6,400. This appeal followed.

A considerable argument between the parties arises out of the question of the state trial court's jurisdiction over Riley's counterclaim. While we believe that the proper basis for dismissal of it was collateral estoppel, some brief

comment on the subject of the state court's jurisdiction is appropriate.

The Union argues that the Federal court allowed its motion to dismiss which alleged as one alternative ground lack of jurisdiction in that court and that it therefore follows that there was no jurisdiction in the state court; it also argues that matters arising under Title I of the LMRDA are exclusively Federal. If, in fact, the Federal dismissal was only for lack of jurisdiction (the extensive proceedings in that court as revealed by its docket sheet appear to belie such a theory), that decision appears erroneous but relief from it cannot be sought in state court but rather by Federal appeal. Further, we do not agree that the Federal jurisdiction is exclusive.

The nub of the argument has to do with Riley's failure to pursue his remedy to its last stage. The Union's constitution sets up its own appellate process. The trial committee's findings may be appealed to the International Executive Committee, as was done in Riley's case. The International Committee's judgment may then be appealed to the International Convention, as was not done.

The rights set forth in Title I include protection of the right to sue, section 101(a)(4), 29 U.S.C. sec. 411(a)(4) (1976):

> "No labor organization shall limit the right of any member thereof to institute an action in any court * * *: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings."

This provision allows courts in their discretion to determine whether pursuit of internal union remedies is re-

quired. (*Foy* v. *Norfolk & Western Ry. Co.* (4th Cir. 1967), 377 F.2d 243, *cert. denied* (1967), 389 U.S. 848, 19 L. Ed. 2d 117, 88 S. Ct. 74; *Giordani* v. *Upholsterers International Union* (2d Cir. 1968), 403 F.2d 85; *Fulton Lodge No. 2 of the International Association of Machinists & Aerospace Workers, AFL-CIO* v. *Nix* (5th Cir. 1969), 415 F.2d 212; *Semancik* v. *United Mine Workers* (3d Cir. 1972), 466 F.2d 144.) Four months of union proceedings is all that is required prior to instituting suits under Title I. (*Giordani; Johnson* v. *General Motors* (2d Cir. 1981), 641 F.2d 1075; *Thompson* v. *New York Central R.R. Co.* (S.D. N.Y. 1966), 250 F. Supp. 175.) Moreover, in cases involving a biased tribunal or other procedural irregularities in the union disciplinary proceedings, the court may regard the results of that proceeding as void, in which case internal union appeals are not required. See Heyden, Landrum-Griffin, Section 101(a)(4)—Its Impact on Employee Rights, 7 Employee Rel. L.J. 643, 650-52 (1982), citing *Libutti* v. *DiBrizzi* (2d Cir. 1964), 337 F.2d 216, and *Chambers* v. *Local Union No. 639, International Brotherhood of Teamsters* (D.C. Cir. 1978), 578 F.2d 375.

In Riley's case, it appears that he fulfilled this four-month exhaustion requirement. The union's trial board issued its decision on November 3, 1980. The international executive committee rendered its decision in the appeal on June 30, 1981. Riley did not file suit in Federal court until July 13, 1981, more than eight months after the trial board's decision issued.

We conclude that Riley's Federal suit was aptly filed. As to the exclusivity argument, we believe that concurrent jurisdiction exists in Federal and state courts in actions brought under Title I of the LMRDA. In the instant case the Union relies on *Safe Workers' Organization Chapter No. 2* v. *Ballinger* (S.D. Ohio 1974), 389

F. Supp. 903, for the proposition that jurisdiction is exclusively Federal.

There are various considerations supporting the concurrent jurisdiction of state courts in actions brought pursuant to Title I of LMRDA. First, the *Safe Workers'* analysis is not persuasive. Second, the Federal district courts are split on this issue and higher courts have not addressed the question. Third, the structure of the LMRDA and the remedies provided by various titles do not mandate exclusive jurisdiction in the Federal courts. Fourth, Illinois courts appear willing to enforce Federal statutes where jurisdiction is not expressly reserved to the Federal courts. Fifth, the language of Title I's enforcement provision, section 102, 29 U.S.C. sec. 412, is comparable to that in the Labor Management Relations Act, section 301, 29 U.S.C. sec. 185(a) (1976), which has been interpreted as granting concurrent jurisdiction. Sixth, concurrent jurisdiction has been exercised in relation to the provisions of LMRDA, Title II, for which the statutory remedy is enforcement by the Secretary of Labor.

In *Safe Workers'* the Federal District Court in construing section 101 of the Landrum-Griffin Act stated that the general rule is that Federal jurisdiction is not exclusive unless Congress chooses to make it so, either expressly or by fair implication. The court went on to state that jurisdiction over 29 U.S.C. sec. 411 is exclusively Federal. The court based its reasoning on an analysis of 29 U.S.C. sec. 412 and 29 U.S.C. sec. 501. Section 412 states in pertinent part: "Any person whose rights secured by the provisions of this subchapter [Title 29 U.S.C. secs. 411-15] have been infringed by any violation of this subchapter may bring a civil action in a *district court of the United States.*" (Emphasis added.) Section 501 provides that members may sue union officials "in any district court

of the United States *or in any state court* of competent jurisdiction." (Emphasis added.) From a comparison of these two sections, the district court reasoned that Congress intended the Federal District Courts to have exclusive jurisdiction for actions brought pursuant to 29 U.S.C. sec. 411.

The cases cited by *Safe Workers'* do not support its theory. (*Parks* v. *International Brotherhood of Electric Workers* (4th Cir. 1963), 314 F.2d 886; *Detroy* v. *American Guild of Variety Artists* (2d Cir. 1961), 286 F.2d 75; *Calhoon* v. *Harvey* (1964), 379 U.S. 134, 13 L. Ed. 2d 190, 85 S. Ct. 292.) In *Parks* the court stated that the LMRDA created new Federal rights for union members to be enforced in Federal courts, but this statement was made in connection with a possible conflict between action under LMRDA and the jurisdiction of the National Labor Relations Board. The *Detroy* court stated that the rights granted under Title I of the LMRDA required a duty to formulate Federal law. The question was exhaustion of internal union remedies and the court stated that Federal courts may develop their own principles regarding the time when union action in violation of Title I of the LMRDA was ripe for judicial intervention. In *Calhoon* the Supreme Court found that the case fell under Title IV, rather than Title I, and that the Federal court did not, therefore, have jurisdiction.

Illinois courts have a tradition of enforcing rights under Federal law. In *Reidelberger* v. *Bi-State Development Agency* (1956), 8 Ill. 2d 121, 133 N.E.2d 272, the supreme court stated that in the absence of constitutional or statutory provisions limiting jurisdiction to Federal courts, state courts have authority to enforce rights under the constitution and statutes of the United States. In *Parkin* v. *Damen-Ridge Apartments, Inc.* (1951), 344 Ill. App. 301,

304, 100 N.E.2d 632, 634, the court cited with approval the general statement from 21 C.J.S. *Courts* sec. 526 (1940): "As a general rule, the grant of jurisdiction to federal courts does not of itself imply that the jurisdiction is to be exclusive."

The same doctrine was more expansively stated by the Supreme Court in *Charles Dowd Box Co.* v. *Courtney* (1962), 368 U.S. 502, 7 L. Ed. 2d 483, 82 S. Ct. 519, in construing section 301(a) of the Labor Management Relations Act (29 U.S.C. sec. 185(a)):

> "We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule." 368 U.S. 502, 507-08, 7 L. Ed. 2d 483, 487, 82 S. Ct. 519, 522-23 (footnote omitted).

See also *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *Lucas Flour Co.* (1962), 369 U.S. 95, 7 L. Ed. 2d 593, 82 S. Ct. 571; *Gordon* v. *Thor Power Tool Co.* (1965), 55 Ill. App. 2d 389, 205 N.E.2d 55; *American Device Manufacturing Co.* v. *International Association of Machinists & Aerospace Workers, AFL-CIO, District No. 9* (1969), 105 Ill. App. 2d 299, 244 N.E.2d 862; *Alexander* v. *Standard Oil Co.* (1977), 53 Ill. App. 3d 690, 695-96, 368 N.E.2d 1010, 1013-14.

We are of the opinion that the Federal District Court had jurisdiction of Riley's complaint filed there and that the circuit court of Macon County had jurisdiction of his counterclaim filed there.

We turn next to the question of collateral estoppel which, in a sense, is derivative of the question of jurisdiction.

Collateral estoppel is a familiar principle of law; stated briefly, it holds that a former adjudication by a court of competent jurisdiction is a bar to a subsequent action, if the action is based on an identity of parties, of subject matter, and of cause of action. (*Gonyo* v. *Gonyo* (1973), 9 Ill. App. 3d 672, 292 N.E.2d 591; *Gudgel* v. *St. Louis Fire & Marine Insurance Co.* (1971), 1 Ill. App. 3d 765, 274 N.E.2d 597.) A comparison of Riley's suit in Federal court and his counterclaim in state court demonstrates beyond argument that these requirements were present.

The Federal court's dismissal order, set forth verbatim above, was nonspecific, although the motion to dismiss raised dual grounds, failure to state a cause of action and lack of jurisdiction. The extensive briefing by the parties in that court together with the filing of the deposition is a clear indication that the motion was something more than a perfunctory disposition on the ground of jurisdiction only. We have already indicated that we believe jurisdiction had attached in the Federal court. The clear implication exists that the Federal court considered Riley's suit on its merits.

Pratt v. *Baker* (1967), 79 Ill. App. 2d 479, 223 N.E.2d 865, is instructive on the matter of dismissal on unspecified grounds. There the plaintiff brought an action in tort and deceit on facts which had been alleged in a prior suit. In that prior suit the trial court had dismissed for failure to state a cause of action. The trial court in the second suit also dismissed on grounds of *res judicata*. The appellate court affirmed holding that the prior action did not contest the facts but disputed the right of the plaintiff to recover on those facts. It therefore did not matter whether the facts were established by extrinsic evidence upon issues joined or admitted by a motion to dismiss. In either case the decision was upon the merits.

So in the instant case, the dismissal by the Federal court upon a motion alleging failure to state a cause of action was an adjudication that no right to recover on the facts pleaded existed.

Federal procedure is even more stringent. In *Rinehart* v. *Locke* (7th Cir. 1971), 454 F.2d 313, in upholding a dismissal by the district court, the court of appeals held that under the Federal Rules of Civil Procedure, unless the district court specifies otherwise, a dismissal operates as an adjudication on the merits, except for dismissals for lack of jurisdiction, for improper venue, or for failure to join necessary parties.

We therefore hold that the district court's dismissal of Riley's suit was an adjudication on the merits and operates as a collateral estoppel on his counterclaim in the circuit court of Macon County, which was correct in dismissing it.

The final question is the propriety of summary judgment. Riley argues that issues of fact remain on questions of notice of trial, fair trial and the number of days upon which he crossed the picket line. The first two are moot by reason of collateral estoppel.

The record is in great confusion over the matter of days across the picket line. The original recommendation of the trial committee was "Fine of $64 per day for 100 days for a total of $6400 or less provided you present proof you worked less in which case $64.00 per day up to 100 days for each day worked." This appears to indicate that some proceeding for additional, or supplementary, proof was contemplated. However, the only provision found in the Union's constitution on the matter relates to appeals. Article 19 of that document provides in pertinent part: "The International Executive Board, in its discretion, may decide the appeal either on the record before it *or by retrial before it.*" (Emphasis added.) Riley did file the appropriate notice of appeal.

The secretary-treasurer of the International Union responded by requesting Riley to submit "any documents, etc. that you may have in your defense." Riley replied: "My reasons for wanting the fine *dropped* are as follows:" (Emphasis added.) Then follows a list of six reasons, all relating to matters other than the fine. No mention is made of abating a portion of the fine, only that the fine be "dropped."

The International Executive Board, so far as the record indicates, did not retry the case. There appears only a letter to Riley from the International Secretary-Treasurer stating that at a meeting of the International Executive Board Riley's appeal "was reviewed and discussed at length." The trial committee's recommendation was adopted except for a provision that Riley be "forever" barred from holding any elected or appointed union office was reduced to "a period of five (5) years."

Thereafter, the parties treated the fine as being in the amount of $6,400. In its motion for summary judgment the Union recited that figure as the fine and in his answer to the motion for summary judgment Riley did not dispute the amount but stated only "that the fine was unlawful."

It was not until he reached this court that Riley raised the question of the number of days upon which the fine was predicated by arguing that his deposition indicated something in the neighborhood of 80 days. In our judgment he has waived any such argument or contention. It was not raised in answer to the motion for summary judgment in the trial court and Riley did not pursue any intraunion remedies described above. Therefore, summary judgment was appropriate.

For all the foregoing reasons, the order of the circuit court of Macon County is affirmed.

Affirmed.

GREEN and MILLER, JJ., concur.

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH JUDICIAL DISTRICT

General No. 482-0506

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, BY SAMUEL J. WILLIAMS, as President, AND LONNIE E. WILLIAMS, as Financial Secretary-Treasurer,

Plaintiffs-Appellees,

v.

ROBERT S. RILEY,

Defendant-Appellant.

Appeal from Circuit Court Macon County
81-LM-895
Donald W. Morthland, Judge Presiding

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RULE 23 ORDER FILED: March 17, 1983

JUSTICES:

HONORABLE ALBERT G. WEBBER, III, P.J.
HONORABLE FREDERICK S. GREEN, J.
HONORABLE BEN K. MILLER, J.
Concurring

NO. 4-82-0506

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, Local 876, By Samuel J. Williams, as President, and Lonnie E. Williams, As Financial Secretary-Treasurer,

Plaintiff-Appellee,

vs.

ROBERT S. RILEY,

Defendant-Appellant.

Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois

NO. 81 LM 895

Honorable Donald W. Morthland, Judge Presiding

PETITION FOR REHEARING

(Filed April 6, 1983)

Defendant-Appellant, ROBERT S. RILEY, by his attorney, ABRAMS, GOMBERG & REESE, LTD., pursuant to Supreme Court Rule 367 and the orders of this Court, respectfully petitions this Court for a rehearing.

This Court filed its Memorandum and Order affirming the decision of the Circuit Court of Macon County on March 17, 1983. A rehearing is sought for the following reasons:

INTRODUCTION

In its Memorandum Opinion dated March 17, 1983, this Court determined that the State Court was properly vested with jurisdiction as to all issues relating to this appeal and that the Defendant, ROBERT S. RILEY, had properly exhausted his administrative and grievance remedies. Thus, the only issues remaining were whether any genuine issues of material fact existed at the time summary judgment was ordered by Judge Morthland and whether Mr. Riley's arguments raising these issues of fact were barred by collateral estoppel.

A. *The law pertaining to collateral estoppel was either overlooked or misapprehended by the Court.*

The law is clear that summary judgment should be awarded by the Court only when the moving party's right thereto is clear and free from doubt and only where it is determined that no material questions of fact exist (pp. 14-15 Appellant's Brief). Defendant has argued that several material questions of fact existed at the time of the entry of the order for summary judgment, namely:

1) Whether the defendant was afforded proper notice of the Trial Committee Meeting wherein the $6,400.00 was imposed; (pp. 17-18 Appellant's Brief, C.49, C.2, C.3);

2) Whether the Defendant was afforded a fair and impartial trial (p. 19, Appellant's Brief, C.124);

3) Whether the Defendant crossed picket lines for 100 days as charged in Plaintiff's Complaint (pp. 20-22, Appellant's Brief, C.2, C.113-114, C.128).

This Court never reached the first two of these issues in that the Court determined that said issues were adjudicated in the previous Federal Court action filed by the

Defendant, and as such Defendant was collaterally estopped from raising these issues as a defense in Circuit Court and again raising them on appeal.

The record is void of any indication that the issues of notice and fair trial were adjudicated on their merits in Federal Court. The Plaintiff herein (Defendant in the Federal Cause) filed a Motion to Dismiss the Federal cause on two grounds: lack of jurisdiction (due to Mr. Riley's alleged failure to exhaust his internal grievance remedies), and failure to state a cause of action (C.83). Although the Federal cause was dismissed, the specified reasons for said dismissal cannot be found anywhere within the record. The dismissal was simply a docket entry (p. 4 Court's Opinion) which did not explain the cause therefore. (C.88).

It is Defendant's contention that this Court either overlooked or misapprehended the law of collateral estoppel as cited by Defendant in his Reply Brief (pp. 6-7) by barring Mr. Riley's right to raise the issues of notice and fair trial. *Gonyo* v. *Gonyo*, 292 N.E.2d 591, 9 Ill.App.3d 672 (1973) stated:

> "A second action may be barred where . . . the *same controlling fact or question material to the determination of both causes has been adjudicated* as the border in establishing the defense under either of the aforementioned principles is upon the part invoting it. . . . The party raising the defense must show with *clarity and certainty* the parties, the *precise issues* and the judgment of the former action" (id. 592-593). (Emphasis added)

Defendant respectfully submits that this Court misapplied collateral estoppel in this appeal as it is clear that the precise issues adjudicated by the Federal Court could not be demonstrated with any clarity and certainty nor is it evident what "controlling factor or questions material to the determination of both causes has been adjudicated."

In the Memorandum Opinion of March 12, 1983, this Court apparently took cognizance of these facts (p. 13 Memorandum Opinion) but failed to properly apply the law pertaining to collateral estoppel. This Court instead chose to improperly apply the law expounded in *Pratt* v. *Baker*, (1967) 79 Ill.App.2d 479, 223 N.E.2d 865. In that case, the Court was found to have properly dismissed a second suit on the grounds of *res adjudicata* where a prior suit had been dismissed *for failure to state a cause of action.* Defendant has amply and specifically argued throughout this appeal that it is impossible to determine if the Federal cause herein was in fact dismissed on the merits (for failure to state a cause of action). In fact, this Court stated to counsel at the Oral Argument that "We don't know what Ackerman (the Federal Judge) did. He may have been out to lunch for all we know". Defendant is stunned that this Court applied the doctrine of collateral estoppel in the face of these circumstances.

In a final attempt to invoke this doctrine (apparently in a major effort to prevent having to adjudicate the issues of notice and fair trial) this Court once again misapplies case law in an apparent effort to bolster its argument. This Court cites *Rinehart* v. *Locke*, (7th Cir. 1971) 454 F.2d 313, (p. 14 of Memorandum Opinion) as holding that:

> "in upholding a dismissal by the District Court, the Court of Appeals held that under the Federal Rules of Civil Procedure, unless the District Court states otherwise, a dismissal operates as an adjudication on the merits, except for *dismissal for lack of jurisdiction* for improper venue or for failure to join necessary parties." (p. 14 of Memorandum Opinion)

This Court misinterpreted this to mean that *any* dismissal is a dismissal on the merits. Such is not the holding of *Rinehart*. *Rinehart* stated at p. 314 that:

> "It has been held that the list in Rule 41(b) of types of dismissal which are not presumptively adjudications

> on the merits is not exclusive, and that the situations where dismissal not provided for in Rule 41 are to operate as adjudication on the merits are those 'in which the defendant must incur the inconvenience of preparing to meet the merits because there is no initial bar to the Court's reaching them'. *The same decision indicates that a dismissal for failure to fulfill a 'precondition' for consideration of the merits is not a decision on the merits.* (Emphasis added)
>
> With this gloss upon the Rule, the question remains a close one, but we are persuaded that under the Rule an order of a district court which dismisses a complaint for failure to state a claim, but which does not specify that the dismissal is without prejudice is res judicata as to the then existing claim which it appears plaintiff was attempting to state." (id. p. 315)

It is thus abundantly clear that *Rinehart* stands for the proposition that a dismissal for failure to state a claim is a dismissal on the merits while a dismissal for failure to fulfill a "precondition" for consideration on the merits (i.e. Riley's failure to exhaust his grievance remedies) is not. Thus, *Rinehart* only bolsters defendant's argument that collateral estoppel cannot be applied absent a clarity and specificity of issues and an adjudication on the merits. By this Court's own admission, it is undeterminable as to why the Federal cause was dismissed. As such, this Court committed gross error in determining that Mr. Riley's arguments as to notice and fair trial were collaterally estopped.

The third issue, the number of days which Mr. Riley crossed the picket lines (on which the imposition of the fine was based) was also barred by this Court based upon the argument that said issue was never raised in the trial court. Such is not the case as defendant raised this issue in his deposition (C.28), said deposition being submitted as Exhibit A in Plaintiff's Motion for Summary Judgment. It is apparent that this Court, as well as the trial court

chose to ignore this issue, rather than affording it the full weight it deserves. The question still remains as to whether the Defendant crossed lines for 100 days or for 80 days as stated in Mr. Riley's deposition. This issue was wrongly ignored by both courts in that it created a genuine issue of material fact at the time summary judgment was entered.

B. *This Court wrongfully ignored the genuine issues of material fact raised by Defendant.*

By applying the doctrine of collateral estoppel, this Court never reached the issue of whether genuine issues of material fact existed at the time summary judgment was entered. Said issues of fact have been discussed hereinabove. By this action, this Court effectively precluded Mr. Riley of his right to present meritorious defenses and thus denied him of his constitutional due process rights.

In effect, this Court has affirmed a summary judgment for $6,400.00 based upon a fine which was improperly imposed. This Court has enforced a fine which was imposed against Defendant without affording defendant sufficient notice, said fine being levied at a trial committee meeting which amounted to a "kangaroo court." (C.124) While this Court searches for a reason to affirm the lower Court, a working man is being deprived of his constitutional due process rights. Mr. Riley has never had a hearing. The only testimony we have of Mr. Riley is his deposition that clearly raises issues of fact. Defendant considers any such denial on the part of this Court of the Defendant's rights to present his defenses a grossly unjust decision by this Court that Mr. Riley had to pay $6,400.00 fine no matter what he offered to the lower court. In effect, he was guilty before proven innocent. This is not in accord with the United States Constitution and our System of Justice.

CONCLUSION

For all the above and foregoing reasons, Defendant respectfully request a rehearing as to all of the above-state matters.

Respectfully Submitted:
/s/ *Barry A. Gomberg*
ABRAMS, GOMBERG & REESE, LTD.

ABRAMS, GOMBERG & REESE, LTD.
135 S. LaSalle Street — Suite 2610
Chicago, Illinois 60603
(312) 372-1981

The undersigned, being first duly sworn on oath deposes and states that she served copies of the above and foregoing to the following:

Ronald A. Carpel, Ltd.
Attorneys at Law
132 South Wacker Drive — 3 Copies
Suite 538 Millikin Court
P.O. Box 309
Decatur, Illinois 62525

Reporter of Decisions
P.O. Box 186 — 1 Copy
Bloomington. Illinois 61701

by First Class Mail on April 6, 1983.

Signature Illegible

SUBSCRIBED and SWORN to before
me this 6 day of April, 1983
/s/ *J. Marlene Mason*
Notary

ABRAMS, GOMBERG & REESE, LTD.
135 S. LaSalle Street — Suite 2610
Chicago, Illinois 60603
(312) 372-1981

ORDER DENYING PETITION FOR A REHEARING

No. 4-82-0506

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, Local 876, By Samuel J. Williams, as President and Lonnie E. Williams, as Financial Secretary-Treasurer,

Plaintiff-Appellee,

vs.

ROBERT S. RILEY,

Defendant-Appellant.

Appeal from the Circuit Court of the Sixth Judicial Circuit
Macon County, Illinois

No. 82 LM 895

Honorable Donald W. Morthland, Judge Presiding

PETITION FOR CERTIFICATE OF IMPORTANCE

NOW COMES the Defendant-Appellant, ROBERT S. RILEY, by his attorneys, ABRAMS, GOMBERG & REESE, LTD., and respectfully requests this Court to issue a certificate of importance to seek review by the Supreme Court pursuant to Supreme Court Rule 316, and in support of this Petition, Defendant states as follows:

1. That this Court erroneously applied the doctrine of collateral estoppel and such wrongful application is an issue of significant importance that must be reviewed by the Supreme Court.

In its Memorandum Opinion dated March 17, 1983, this Court ruled that Defendant was collaterally estopped from raising in the Trial Court and on appeal several genuine issues of material fact which existed at the time of the entry of the Order of Summary Judgment, namely:

A. Whether the Defendant was afforded proper notice of the Trial Committee Meeting wherein the $6,400.00 fine was imposed; (pp. 17-18 Appellant's Brief, C.49, C.2, C.3);

B. Whether the Defendant was afforded a fair and impartial trial; (p. 19, Appellant's Brief, C.124);

C. Whether the Defendant crossed picket lines for 100 days as charged in Plaintiff's Complaint; (pp. 20-22, Appellant's Brief, C.2, C.113-114, C.128).

The doctrine of collateral estoppel was most wrongfully applied as the record is entirely void of any indication that the issues of notice and fair trial were adjudicated on their merits in Federal Court.

The Plaintiff herein (Defendant in the Federal Cause) filed a Motion to Dismiss the Federal cause on two grounds: lack of jurisdiction (due to Mr. Riley's alleged failure to exhaust his internal grievance remedies), and failure to state a cause of action (C.83). Although the Federal cause was dismissed, the specified reasons for said dismissal cannot be found anywhere within the record. The dismissal was simply a docket entry (p. 4 Court's Opinion) which did not explain the cause therefore (C.88). The total void of the reasons for the Federal cause dismissal renders it impossible for any court to legitimately apply collateral estoppel. *Gonyo* v. *Gonyo*, 292 N.E.2d 591, 9 Ill.App.3d 672 (1973) stated:

"A second action may be barred where . . . the *same controlling fact or question material to the determina-*

> *tion of both causes has been adjudicated* as the border in establishing the defense under either of the aforementioned principles is upon the part invoting it. . . . The party raising the defense must show with *clarity and certainty* the parties, the *precise issues* and the judgment of the former action." (id. 592-593) (emphasis added)

This Court chose to ignore *Gonyo* and instead chose to improperly apply case law wholly inapplicable to the instant case. (pp. 4-5 Petition for Rehearing).

In addition, not only did this Court not know with clarity and certainty the precise issues and judgment of the Federal Cause, but in fact this Court stated to counsel at the Oral Argument that, "We don't know what Ackerman (the Federal Judge) did. He may have been at lunch for all we know."

In light of the law governing the application of collateral estoppel and this Court's own admission that it is impossible to determine the basis upon which the Federal Cause was dismissed, this Court's ruling shocks the conscience of all reason and justice. If this Court's ruling was to be permitted to stand, the doctrine of collateral estoppel would be severely eroded. Accordingly, this issue is of such grave importance that this Court should certify the Defendant's appeal to the Supreme Court of Illinois.

2. This Court wrongfully denied the Defendant his day in Court.

In effect, this Court has affirmed a summary judgment for $6,400.00 based upon a fine which was improperly imposed. This Court has enforced a fine which was imposed against Defendant without affording Defendant sufficient notice, said fine being levied at a trial committee meeting which amounted to a "kangaroo court" (C.124). While this Court searches for a reason to affirm the lower Court,

a working man is being deprived of his constitutional due process rights. A working man is being denied his right to walk off a union picket line for good cause. Mr. Riley is being denied an opportunity to assert Federal and State statutes that insure his employment rights.

Mr. Riley has never had a hearing. The only testimony we have of Mr. Riley is his deposition that clearly raises issues of fact. Defendant considers any such denial on the part of this Court of the Defendant's rights to present his defenses a grossly unjust decision by this Court that Mr. Riley had to pay $6,400.00 fine no matter what he offered to the lower Court. In effect, he was guilty before proven innocent. This is not in accord with the United States Constitution and our System of Justice.

WHEREFORE, Defendant respectfully prays this Honorable Court certify this cause to the Supreme Court for review.

Respectfully Submitted:

/s/ *Signature Illegible*

ABRAMS, GOMBERG & REESE, LTD.

ABRAMS, GOMBERG & REESE, LTD.
135 S. LaSalle Street — Suite 2610
Chicago, Illinois 60603
(312) 372-1981

The undersigned, being first duly sworn on oath, deposes and states that she served a copy of the foregoing Petition for Certificate of Importance to:

Ronald A. Carpel, Ltd.
Attorneys at Law
132 South Wacker Drive
Suite 538 — Millikin Court
P.O. Box 309
Decatur, Illinois 62525

by mailing a copy of same, postage prepaid on the 27th day of April, 1983.

/s/ *Alexa Solomon*

SUBSCRIBED and SWORN to
before me this 27 day
of April, 1983

/s/ *Signature Illegible*
Notary Public

ABRAMS, GOMBERG & REESE, LTD.
135 S. LaSalle Street — Suite 2610
Chicago, Illinois 60603
(312) 372-1981
Attorneys for Defendant-Appellant

STATE OF ILLINOIS
APPELLATE COURT
Fourth District
Supreme Court Building
Springfield 62706

Clerk of the Court
(217) 782-2586

Research Director
(217) 782-3528

DATE: May 5, 1983

RE: Int'l. Union of AIW of America, AFL-CIO, Local 876 v. Riley
General No. 482-0506
Macon 81-LM-895

TO COUNSEL:

Today I have entered an order of this court in the above cause, denying the petition of appellant for certificate of importance.

DARRYL PRATSCHER, Clerk
Appellate Court
Fourth District

DP:pd

TO: Abrams, Gomberg & Reese, Ltd./Barry A. Gomberg/
Arlynn R. Cohen
Ronald L. Carpel, Ltd.

Received May 9, 1983.

APPENDIX D

IN THE SUPREME COURT OF ILLINOIS

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, by SAMUEL J. WILLIAMS, as President and LONNIE E. WILLIAM, as Financial Secretary-Treasurer,

Plaintiff-Appellee,

vs.

ROBERT S. RILEY,

Defendant-Appellant.

Appeal from the Circuit Court of Macon County, Illinois
81 LM 895

Appeal from the Appellate Court of Illinois, Fourth Judicial District 4-82-0506

PETITION FOR LEAVE TO APPEAL TO THE SUPREME COURT

NOW COMES ROBERT S. RILEY, Defendant-Appellant, by his attorneys, ABRAMS, GOMBERG & REESE, LTD., and respectfully requests leave to appeal to the Supreme Court from the Order of the Appellate Court of Illinois for the Fourth District, entered heretofore on March 17, 1983. The Petition for Rehearing was filed in the Appellate Court on April 6, 1983, and denied on April 14, 1983. In support of this Petition, Defendant respectfully states as follows:

I. STATEMENT OF FACTS

Defendant, ROBERT S. RILEY, appeals from an Order of the Circuit Court of Macon County which dismissed with prejudice his Amended Counter-Claim and entered Sum-

mary Judgment in favor of the Plaintiff. The Appellate Court of Illinois for the Fourth District affirmed.

ROBERT S. RILEY, is an employee of the Archer Daniels Midland Company (hereinafter "ADM") located in Decatur, Illinois and a member of the ALLIED INDUSTRIAL WORKERS OF AMERICA INTERNATIONAL UNION (hereinafter "AIW") AFL-CIO, LOCAL UNION 876.

On the 8th day of February, 1980, a strike was called by the Plaintiff Local. The Plaintiff Local established picket lines near ADM (C. 2).

From February 22, 1980 to May 19, 1980, during the aforementioned strike, the Defendant crossed the established picket lines and worked for ADM for the duration of the strike (C. 2). As a result of the aforementioned action on the part of the Defendant, the Plaintiff Local imposed fines on the Defendant at the rate of $64.00 for each day which the Defendant crossed picket lines pursuant to local Constitution Articles 13.09, 14.04 and 19.04 (C. 2). The Defendant was fined a total of $6,400.00, the Union having established the Defendant crossed lines for approximately 100 days.

The Union notified the Defendant of the aforementioned charges and set a date for trial (C. 58, C. 59, C. 60). The initial trial date was set for September 30, 1980. The Defendant was served with notice on September 27, 1980. Subsequently, the Union continued the trial date to October 6, 1980, and the Defendant was informed of this date on October 1, 1980 (C. 99, C. 121-122). On October 6, 1980, the Plaintiff Local conducted a trial in Defendant's absence and found the Defendant to be in violation of Article 32.04 of the Union Constitution (C. 50, 51). Defendant was then notified of the findings of the trial committee on or about November 3, 1980 (C. 63).

Defendant subsequently appealed from the decision of the trial committee to the International Executive Board on December 10, 1980, pursuant to Article 19 of the Constitution of the International Union (C. 75). The International Executive Board denied the appeal (C. 80).

On July 13, 1981, Defendant (utilizing other than present counsel) filed a Complaint in the United States District Court, Central District, seeking a declaratory judgment as to the aforementioned disciplinary action taken by the Union, arguing that such action was in violation of Ch. 29 U.S.C., §411(a)(5)(c). The Union filed a Motion to Dismiss the Federal Cause on two grounds. (1) Lack of jurisdiction (due to Riley's failure to exhaust his administrative remedies), and (2) failure to state a claim upon which relief can be granted. On December 7, 1981, the District Court made the following docket entry:

> "The Court has again examined the file. Attorney for Plaintiff has not filed any further response to Defendant's Motion to Dismiss. It appears that said motion is well taken and therefore this case must be dismissed. CAUSE DISMISSED (Ackerman, J.)"

At no point did the Federal Court specify the reason for said dismissal (C. 84, 88).

Plaintiff filed a Complaint in the Circuit Court of Macon County seeking enforcement of the $6,400.00 fine assessed by a trial committee on December 22, 1981. Defendant answered the Complaint and filed a Counter-Claim on January 18, 1982, seeking dismissal of the action, a declaratory judgment finding that the actions of Plaintiff were in violation of the Labor-Management Reporting and Disclosure Act and appropriate monetary damages (C. 66-70). Specifically, Mr. Riley claimed that the Notice of Trial was inadequate and in violation of §101(a)(5)(D) of LMRDA (29 U.S.C. §411(a)(5)(B); and that he was not afforded a fair trial in violation of 29 U.S.C. §411(a)(5)(c).

Riley further alleged that the trial committee was stacked against him and that he had been subjected to continuing harrassment which constituted cruel and unusual punishment. Plaintiff filed a Motion to Dismiss the Counter-Claim on January 22, 1982 (C. 83-85) on three grounds: (1) lack of jurisdiction in the State Court, (2) collateral estoppel, and (3) pleading conclusions of law. In support of the collateral estoppel ground there was attached a certified copy of the docket sheet of the United States District Court for the Central District of Illinois, case number 81-3216 together with a copy of the Complaint and a Motion to Dismiss.

On February 18, 1982, the Union filed a Motion for Summary Judgment supported by affidavits and Riley's filed deposition. In that deposition, Riley admitted that he crossed the picket line but asserted that he did so only after being harrassed by Union officials and further stated that after returning to work, he worked approximately 80 days during the strike. On July 16, 1982, the trial court entered a written judgment order which found: (1) that it had jurisdiction; (2) that the Union be allowed to amend its Complaint without objection; (3) that the Motion to Dismiss the Amended Counter-Claim be allowed because; a) it failed to state a cause of action; and b) Riley was clearly estopped by the dismissal of the Federal action; and c) that the Union's Motion for Summary Judgment be allowed. The Court thereupon entered Judgment in favor of the Union and against Riley in the sum of $6,400.00. This appeal followed.

Mr. Riley's appeal stated that the Circuit Court's entering of Summary Judgment was error as several genuine issues of material fact existed at the time of the entry of the Order for Summary Judgment, namely:

(1) Whether the Defendant was afforded proper notice of the trial committee meeting wherein the $6,400.00 fine was imposed; (C. 49, C. 2, C. 3);

(2) Whether the Defendant was afforded a fair and impartial trial (C. 124);

(3) Whether the Defendant crossed the picket lines for 100 days as charged in Plaintiff's Complaint (C. 2, C. 113-14, C. 128).

The Appellate Court determined that Mr. Riley was collaterally estopped from raising these issues, as they had been previously adjudicated upon a Motion to Dismiss in the Federal cause.

II. STATEMENT OF THE POINTS RELIED UPON BY THE APPELLATE COURT

In its Memorandum Opinion of March 17, 1982, the Appellate Court determined that the State Court was properly vested with jurisdiction as to all issues relating to this appeal and that the Defendant, Robert S. Riley, had properly exhausted his administrative and grievance remedies. Thus, the only issues remaining were whether any genuine issues of material fact existed at the time Summary Judgment was ordered by Judge Morthland and whether Mr. Riley's arguments raising these issues of fact were barred by collateral estoppel.

The Appellate Court never reached the first two issues of fact in that the Court determined that said issues were adjudicated in the previous Federal Court action filed by the Defendant, and as such, Defendant was collaterally estopped from raising these issues as a defense in the Circuit Court and again raising them on appeal. The third issue, the number of days which Mr. Riley crossed the picket lines (on which the imposition of the fine was based)

was also not reached by the Appellate Court in that it determined that said argument was barred in that it was never raised in the trial court. Defendant respectfully contends that the Appellate Court committed gross error in reaching both these determinations.

III. ARGUMENT

The law of collateral estoppel was wholly misapplied by the Appellate Court, and as such review by the Supreme Court is clearly warranted. The record is void of any indication that the issues of notice and fair trial were adjudicated on the merits in Federal Court. The Plaintiff herein (Defendant in the Federal Cause) filed a Motion to Dismiss the Federal Cause on two grounds: lack of jurisdiction (due to Mr. Riley's alleged failure to exhaust his internal grievance remedies) and failure to state a cause of action (C. 83). Although the Federal cause was in fact dismissed, the specific reasons for said dismissal cannot be found anywhere within the record. The dismissal was simply a docket entry (pg. 4 Court's Opinion) which did not explain the cause therefore (C. 88). As such, the Appellate Court committed gross error in determining that Defendant was collaterally estopped from raising these issues. The law pertaining to collateral estoppel is clearly stated in *Gonyo* v. *Gonyo*, 292 N.E.2d 591, 9 Ill.App.3d 672 (1973):

> "A second action may be barred where . . . ***the same controlling fact or question material to the determination of both causes has been adjudicated*** as the burden in establishing the defense under either of the aforementioned principles is upon the parties invoking it . . . ***The party raising the defense must show with clarity and certainty the parties, the precise issues and the judgment of the former action.***" Id. at 592-593 (emphasis added).

The Appellate Court wrongfully applied collateral estoppel in the instant case, as it is clear that the precise issues

adjudicated by the Federal Court cannot be demonstrated with any clarity and certainty nor was it evident that "controlling fact or question material to the determination of both causes has been adjudicated".

In its Memorandum Opinion of March 12, 1983, the Appellate Court apparently took cognizance of this fact (pg. 13, Memorandum Opinion) but failed to properly apply the aforestated law. The Court instead chose to improperly apply the law expounded in *Pratt* v. *Baker*, 79 Ill.App.2d 479, 223 N.E.2d 865 (1967). In that case, the Court was found to have properly dismissed a second suit on the grounds of res adjudicata where a prior suit had been dismissed for failure to state a cause of action. *Pratt* is wholly distinguishable from the instant case in that Mr. Riley has amply and specifically argued throughout this appeal that it was impossible to determine if in fact the Federal cause was dismissed on the merits (for failure to state a cause of action). In fact, the Appellate Court stated to counsel at the oral argument that "We don't know what Ackerman (the Federal Judge) did. He may have been out to lunch for all we know".

The Appellate Court again misapplied the law of collateral estoppel in citing *Reinhart* v. *Locke*, also wholly inapplicable to the instant case. Reinhart states at page 314 that:

> "It has been held that the list in Rule 41(b) of types of dismissal which are not presumptively adjudications on the merits is not exclusive, and that the situations where dismissal are not provided for in Rule 41 are to operate as adjudication on the merits are those "in which the Defendant must incur the inconvenience of preparing to meet the merits because there is no initial bar to the Courts reaching them". *The same decision indicates a dismissal for failure to fulfill a "pre-condition" for consideration of the merits is not a decision on the merits.*"

It is thus abundantly clear that *Reinhart* stands for the proposition that a dismissal for failure to state a claim is a dismissal on the merits while a dismissal for failure to fulfill a "pre-condition" a consideration on the merits (i.e. Riley's failure to exhaust his grievance remedies) is not. In this case, we do not know whether the dismissal of the Federal cause was for failure to state a claim or for failure to fulfill a "pre-condition" for consideration on the merits. Collateral estoppel must not be applied absent a clarity and specificity of issues and an adjudication on the merits. By the Appellate Court's own admission, it was undeterminable as to why the Federal cause was dismissed. As such, the Appellate Court committed serious error in determining that Mr. Riley's arguments as to notice and fair trial were collaterally estopped.

Finally, the Appellate Court found that the third issue, the number of days which Mr. Riley crossed the picket lines, was also barred in that said issue was never raised in the trial court. However, such was obviously not the case as Defendant raised this issue in his deposition (C. 28), said deposition having been filed in the trial court and having been submitted as Exhibit "A" in Plaintiff's Motion for Summary Judgment. It is apparent that both the Appellate Court as well as the Trial Court chose to ignore this issue, rather than affording it the full weight it deserves. The question still remains as to whether the Defendant crossed lines for 100 days or for 80 days as stated in Mr. Riley's deposition testimony. This issue clearly raises a genuine issue of material fact, as the fine imposed upon Mr. Riley was based upon the number of days which he actually crossed picket lines during the authorized strike. The Appellate Court wrongfully determined said issue was barred, and accordingly, review by this Court is most clearly warranted.

Furthermore, Riley's Federal suit sought only a declaratory judgment. The Union succeeded upon a Motion for Summary Judgment in the trial court as the lower court found Riley was estopped from asserting his rights under the Labor-Management Reporting and Disclosure Act. Because of the determination, no Court has ever decided whether this union violated Riley's rights. Could Riley walk off the picket lines and go to work if he desired? Riley has never been able to assert his federally protected rights.

In determining that Mr. Riley was barred from raising the aforementioned issues either in the trial court or on appeal, the Appellate Court wrongfully ignored the genuine issues of material fact which were raised by the Defendant. These issues of fact have been discussed hereinabove. In its action, the Court effectively precluded Mr. Riley of his right to present meritorious defenses and thus denied him of his Constitutional due process rights.

In effect, the Appellate Court affirmed a Summary Judgment for $6,400.00 based upon a fine which was improperly imposed. The Court enforced a fine which was imposed against Defendant without affording Defendant sufficient notice, said fine being levied at a trial committee meeting which amounted to a "kangaroo court" (C. 124). A working man has been deprived of his Constitutional due process rights. Mr. Riley has never had a hearing. The only testimony we have of Mr. Riley is his deposition that clearly raises genuine issues of material fact. Defendant considers denial on the part of the Appellate Court for the Defendant's rights to present his defense as a grossly unjust decision in ordering that Mr. Riley had to pay a $6,400.00 fine no matter what he offered to the lower court. In effect, he was guilty before proven innocent. This is not in accord with the United States Constitution and our system of justice.

Finally, the Appellate Court erroneously misapplied and misinterpreted the law pertaining to collateral estoppel. If the Appellate Court's ruling were permitted to stand, the doctrine of collateral estoppel would be most severely eroded. In effect, the law as it exists now would become non existent. The impact of the Appellate Court's ruling would eliminate the well established law of collateral estoppel which now exists and in its place establish new law which in effect would stand for the proposition that any plaintiff or any defendant would be collaterally estopped from raising any issues as defenses under any circumstances if they were merely part of the subject matter of a previous suit, even if said suit was not adjudicated upon the merits. Such law would work to deny many citizens of this State their Constitutional due process rights.

Accordingly, review by this Court is greatly warranted, and the decision of the Appellate Court herein must be reversed.

WHEREFORE, Defendant, ROBERT S. RILEY, respectfully prays this Honorable Court grant him leave to appeal from the decision of the Appellate Court herein.

Respectfully Submitted:

/s/ Barry A. Gomberg

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Counsel for Appellant

NO. 4-82-0506

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

(Filed March 17, 1983)

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, BY SAMUEL J. WILLIAMS, As President, AND LONNIE E. WILLIAMS, As Financial Secretary-Treasurer,

Plaintiffs-Appellees,

v.

ROBERT S. RILEY,

Defendant-Appellant.

Appeal from Circuit Court County of Macon No. 81LM895
Honorable *Donald W. Morthland*, Judge Presiding.

PRESIDING JUSTICE WEBBER delivered the order of the court:

Defendant (Riley) appeals from an order of the circuit court of Macon County which dismissed with prejudice his amended counterclaim and entered summary judgment in favor of the plaintiff (Union). We affirm.

Some background is necessary to an understanding of the issues raised on appeal. The instant complaint was filed in the circuit court of Macon County on December 22, 1981. In it the Union alleged that it had been on strike against Archer-Daniels-Midland Corporation, located at Decatur, from February 8, 1980, until May 19, 1980; and that Riley had crossed the picket line in violation of the Union's constitution, a copy of which was attached to the

complaint. It was further alleged that under the provisions of the constitution Riley was ordered to stand trial before a union trial committee on September 30, 1980, and was so notified of such trial; further, that the trial was continued until October 6, 1980, in order to allow Riley time to prepare his defense. The complaint then alleged that Riley failed to appear at the trial and that the trial committee found him guilty of violating the Union's constitution; the minutes of the committee were attached to the complaint and revealed that Riley was fined by the committee $64 per day for 100 days, being the number of days on which the committee found he had crossed the picket line. The complaint then prayed for enforcement of the fine of $6,400.

On January 18, 1982, Riley filed an answer and counterclaim. In the counterclaim he alleged violations by the Union of certain provisions of a Federal statute known as the Labor-Management Reporting and Disclosure Act, more commonly called the Landrum-Griffin Act (LMRDA). Specifically, he claimed that the notice of trial was inadequate in violation of section 101(a)(5)(B) of LMRDA (29 U.S.C. sec. 411(a)(5)(B)); and that he was denied a fair trial in violation of section 101(a)(5)(C) (29 U.S.C. sec. 411(a)(5)(C)). He further alleged that the trial committee was prejudiced against him and that he had been subjected to continuing harassment which constituted cruel and unusual punishment. His prayer for relief asked dismissal of the Union's complaint and for damages for harassment. Attached as an exhibit to the counterclaim was a letter of appeal by Riley to the International Union and a letter from that body denying the appeal.

The Union filed a motion to dismiss the counterclaim which set up essentially three grounds: (1) lack of jurisdiction in the state court, (2) collateral estoppel, and

(3) pleading conclusions of law. In support of the collateral estoppel ground there was attached a certified copy of the docket sheet of the United States District Court for the Central District of Illinois in case number 81-3216, together with a copy of the complaint and a motion to dismiss. These documents reveal that on July 13, 1981, Riley filed the suit against the Union for violation of his rights under the LMRDA and service was had upon the Union. Thereafter, in addition to the motion to dismiss, the Union filed a motion to strike, the exact nature of which is not indicated. Memoranda in support of both motions were filed and Riley filed answers to both motions together with memoranda in support of the answers. On November 10, 1981, the cause was called for hearing on all motions. The docket entry of that date indicates that Riley's attorney chose not to appear but to stand on his memoranda already filed. The District Court allowed the filing of Riley's deposition taken September 8, 1981, and granted Riley 21 days in which to make response.

On December 7, 1981, the District Court made the following docket entry:

> "The Court has again examined file. Atty. for Pltf. has not filed any further response to deft's motion to dismiss. It appears that said motion is well taken and therefore this case must be dismissed. CAUSE DISMISSED. (Ackerman, J.)"

The copy of the motion to dismiss in the District Court indicates that its grounds were: (1) failure to state a cause of action, and (2) Riley's failure to exhaust his internal union remedies as required by section 101(a)(4) of the LMRDA. 29 U.S.C. sec. 411(a)(4).

To summarize to this point: Riley sued the Union on an LMRDA complaint in Federal court in July 1981 and was

dismissed in December 1981; two weeks later the Union filed the instant suit in state court, and Riley set up as a counterclaim essentially the matters on which he had previously sued.

On February 18, 1982, the Union filed a motion for summary judgment supported by affidavits and Riley's Federal deposition. In that deposition Riley admitted that he crossed the picket line but asserted that he did so only after being harassed by Union officials over a nonexistent petition which he allegedly circulated asking others to return to work. He stated that after returning to work he worked approximately 80 days during the strike. He admitted that on September 27, 1980, he received a certified letter of notice of the trial that was to take place on September 30, 1980. He knew that this was contrary to the Union constitution so he refused to attend. He also stated that he got a letter on September 29, 1980, stating that the Union had violated the constitution and therefore the trial was moved back to October 6, 1980. He felt that the trial committee was stacked against him since several members had harassed him regarding the nonexistent petition. However, he did not notify the trial committee that he thought the trial was improper and he would refuse to attend. He stated that he would have appeared if the trial had been constitutional and if he could have been represented by an attorney. He stated he believed he could not be so represented. Further he said that even counting from September 27, 1980, there were only nine days between the time he received notice and the time of the trial. Finally he testified that he appealed to the International with counsel's advice. However, he stated that he did not appeal to the International convention which was held in August 1981. He stated that he did not know that he could so appeal although he did admit that he had a copy of the Union constitution which reveals that such an appeal is a

necessary step in exhausting internal union remedies. He admitted that a hand delivered copy of the charges was received by him on September 25, 1980.

On March 1, 1982, Riley, without leave of court, filed an amended counterclaim, alleging essentially the same matters as appeared in the original counterclaim but adding that the Federal suit was dismissed for failure to exhaust internal union remedies. The Union filed a motion to dismiss or to strike the amended counterclaim on the same grounds as in its original motion. Riley answered the motion, alleging that collateral estoppel did not apply. He also filed an answer to the motion for summary judgment, stating that he had good reason for crossing the picket line as stated in his affidavit. However, the affidavit does not appear in the record.

On July 16, 1982, the trial court entered a written judgment order which found: (1) that it had jurisdiction; (2) that the Union be allowed to amend its complaint without objection; (3) that the motion to dismiss the amended counterclaim be allowed because (a) it failed to state a cause of action, and (b) Riley was collaterally estopped by the dismissal of the Federal action; and (4) that the Union's motion for summary judgment be allowed. The court thereupon entered judgment in favor of the Union and against Riley in the sum of $6,400. This appeal followed.

A considerable argument between the parties arises out of the question of the state trial court's jurisdiction over Riley's counterclaim. While we believe that the proper basis for dismissal of it was collateral estoppel, some brief comment on the subject of the state court's jurisdiction is appropriate.

The Union argues that the Federal court allowed its motion to dismiss which alleged as one alternative ground

lack of jurisdiction in that court and that it therefore follows that there was no jurisdiction in the state court; it also argues that matters arising under Title I of the LMRDA are exclusively Federal. If, in fact, the Federal dismissal was only for lack of jurisdiction (the extensive proceedings in that court as revealed by its docket sheet appear to belie such a theory), that decision appears erroneous but relief from it cannot be sought in state court but rather by Federal appeal. Further, we do not agree that the Federal jurisdiction is exclusive.

The nub of the argument has to do with Riley's failure to pursue his remedy to its last stage. The Union's constitution sets up its own appellate process. The trial committee's findings may be appealed to the International Executive Committee, as was done in Riley's case. The International Committee's judgment may then be appealed to the International Convention, as was not done.

The rights set forth in Title I include protection of the right to sue, section 101(a)(4), 29 U.S.C. sec. 411(a)(4) (1976):

> "No labor organization shall limit the right of any member thereof to institute an action in any court * * *; *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings."

This provision allows courts in their discretion to determine whether pursuit of internal union remedies is required. (*Foy* v. *Norfolk & Western Ry. Co.* (4th Cir. 1967), 377 F.2d 243, *cert. denied* (1967), 389 U.S. 848, 19 L. Ed. 2d 117, 88 S. Ct. 74; *Giordani* v. *Upholsterers International Union* (2d Cir. 1968), 403 F.2d 85; *Fulton Lodge No. 2 of*

the International Association of Machinists & Aerospace Workers, AFL-CIO v. *Nix* (5th Cir. 1969), 415 F.2d 212; *Semancik* v. *United Mine Workers* (3rd Cir. 1972), 466 F.2d 144.) Four months of union proceedings is all that is required prior to instituting suits under Title I. (*Giordani; Johnson* v. *General Motors* (2d Cir. 1981), 641 F.2d 1075; *Thompson* v. *New York Central R.R. Co.* (S.D. N.Y. 1966), 250 F. Supp. 175.) Moreover, in cases involving a biased tribunal or other procedural irregularities in the union disciplinary proceedings, the court may regard the results of that proceeding as void, in which case internal union appeals are not required. See Heyden, Landrum-Griffin, Section 101(a)(4)—Its Impact on Employee Rights, 7 Employee Rel. L.J. 643, 650-52 (1982), citing *Libutti* v. *Di Brizzi* (2d Cir. 1964), 337 F.2d 216, and *Chambers* v. *Local Union No. 639, International Brotherhood of Teamsters* (D.C. Cir. 1978), 578 F.2d 375.

In Riley's case, it appears that he fulfilled this four-month exhaustion requirement. The union's trial board issued its decision on November 3, 1980. The international executive committee rendered its decision in the appeal on June 30, 1981. Riley did not file suit in Federal court until July 13, 1981, more than eight months after the trial board's decision issued.

We conclude that Riley's Federal suit was aptly filed. As to the exclusivity argument, we believe that concurrent jurisdiction exists in Federal and state courts in actions brought under Title I of the LMRDA. In the instant case the Union relies on *Safe Workers' Organization Chapter No. 2* v. *Ballinger* (S.D. Ohio 1974), 389 F. Supp. 903, for the proposition that jurisdiction is exclusively Federal.

There are various considerations supporting the concurrent jurisdiction of state courts in actions brought pursuant to Title I of LMRDA. First, the *Safe Workers'* analysis is not persuasive. Second, the Federal district

courts are split on this issue and higher courts have not addressed the question. Third, the structure of the LMRDA and the remedies provided by various titles do not mandate exclusive jurisdiction in the Federal courts. Fourth, Illinois courts appear willing to enforce Federal statutes where jurisdiction is not expressly reserved to the Federal courts. Fifth, the language of Title I's enforcement provision, section 102, 29 U.S.C. sec. 412, is comparable to that in the Labor Management Relations Act, section 301, 29 U.S.C. sec. 185(a) (1976), which has been interpreted as granting concurrent jurisdiction. Sixth, concurrent jurisdiction has been exercised in relation to the provisions of LMRDA, Title II, for which the statutory remedy is enforcement by the Secretary of Labor.

In *Safe Workers'* the Federal District Court in construing section 101 of the Landrum-Griffin Act stated that the general rule is that Federal jurisdiction is not exclusive unless Congress chooses to make it so, either expressly or by fair implication. The court went on to state that jurisdiction over 29 U.S.C. sec. 411 is exclusively Federal. The court based its reasoning on an analysis of 29 U.S.C. sec. 412 and 29 U.S.C. sec. 501. Section 412 states in pertinent part: "Any person whose rights secured by the provisions of this subchapter [Title 29 U.S.C. secs. 411-15] have been infringed by any violation of this subchapter may bring a civil action in a *district court of the United States.*" (Emphasis added.) Section 501 provides that members may sue union officials "in any district court of the United States *or in any State court* of competent jurisdiction." (Emphasis added.) From a comparison of these two sections, the district court reasoned that Congress intended the Federal District Courts to have exclusive jurisdiction for actions brought pursuant to 29 U.S.C. sec. 411.

The cases cited by *Safe Workers'* do not support its theory. (*Parks* v. *International Brotherhood of Electric Workers* (4th Cir. 1963), 314 F.2d 886; *Detroy* v. *American Guild of Variety Artists* (2d Cir. 1961), 286 F.2d 75; *Calhoon* v. *Harvey* (1964), 379 U.S. 134, 13 L. Ed. 2d 190, 85 S. Ct. 292.) In *Parks* the court stated that the LMRDA created new Federal rights for union members to be enforced in Federal courts, but this statement was made in connection with a possible conflict between action under LMRDA and the jurisdiction of the National Labor Relations Board. The *Detroy* court stated that the rights granted under Title I of the LMRDA required a duty to formulate Federal law. The question was exhaustion of internal union remedies and the court stated that Federal courts may develop their own principles regarding the time when union action in violation of Title I of the LMRDA was ripe for judicial intervention. In *Calhoon* the Supreme Court found that the case fell under Title IV, rather than Title I, and that the Federal court did not, therefore, have jurisdiction.

Illinois courts have a tradition of enforcing rights under Federal law. In *Reidelberger* v. *Bi-State Development Agency* (1956), 8 Ill. 2d 121, 133 N.E.2d 272, the supreme court stated that in the absence of constitutional or statutory provisions limiting jurisdiction to Federal courts, state courts have authority to enforce rights under the constitution and statutes of the United States. In *Parkin* v. *Damen-Ridge Apartments, Inc.* (1951), 344 Ill. App. 301, 304, 100 N.E.2d 632, 634, the court cited with approval the general statement from 21 C.J.S. *Courts* sec. 526 (1940): "As a general rule, the grant of jurisdiction to federal courts does not of itself imply that the jurisdiction is to be exclusive."

The same doctrine was more expansively stated by the Supreme Court in *Charles Dowd Box Co.* v. *Courtney* (1962), 368 U.S. 502, 7 L. Ed. 2d 483, 82 S. Ct. 519, in construing section 301(a) of the Labor Management Relations Act (29 U.S.C. sec. 185(a)):

> "We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule." 368 U.S. 502, 507-08, 7 L. Ed. 2d 483, 487, 82 S. Ct. 519, 522-23 (footnote omitted).

See also *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *Lucas Flour Co.* (1962), 369 U.S. 95, 7 L. Ed. 2d 593, 82 S. Ct. 571; *Gordon* v. *Thor Power Tool Co.* (1965), 55 Ill. App. 2d 389, 205 N.E. 2d 55; *American Device Manufacturing Co.* v. *International Association of Machinists & Aerospace Workers, AFL-CIO, District No. 9* (1969), 105 Ill. App. 2d 299, 244 N.E.2d 862; *Alexander* v. *Standard Oil Co.* (1977), 53 Ill. App. 3d 690, 695-96, 368 N.E.2d 1010, 1013-14.

We are of the opinion that the Federal District Court had jurisdiction of Riley's complaint filed there and that the circuit court of Macon County had jurisdiction of his counterclaim filed there.

We turn next to the question of collateral estoppel which, in a sense, is derivative of the question of jurisdiction. Collateral estoppel is a familiar principle of law; stated briefly, it holds that a former adjudication by a court of competent jurisdiction is a bar to a subsequent action, if the action is based on an identity of parties, of subject matter, and of cause of action. (*Gonyo* v. *Gonyo* (1973), 9 Ill. App. 3d 672, 292 N.E.2d 591; *Gudgel* v. *St. Louis Fire & Marine Insurance Co.* (1971), 1 Ill. App. 3d 765, 274

N.E.2d 597.) A comparison of Riley's suit in Federal court and his counterclaim in state court demonstrates beyond argument that these requirements were present.

The Federal court's dismissal order, set forth verbatim above, was nonspecific, although the motion to dismiss raised dual grounds, failure to state a cause of action and lack of jurisdiction. The extensive briefing by the parties in that court together with the filing of the deposition is a clear indication that the motion was something more than a perfunctory disposition on the ground of jurisdiction only. We have already indicated that we believe jurisdiction had attached in the Federal court. The clear implication exists that the Federal court considered Riley's suit on its merits.

Pratt v. *Baker* (1967), 79 Ill. App. 2d 479, 223 N.E.2d 865, is instructive on the matter of dismissal on unspecified grounds. There the plaintiff brought an action in tort and deceit on facts which had been alleged in a prior suit. In that prior suit the trial court had dismissed for failure to state a cause of action. The trial court in the second suit also dismissed on grounds of *res judicata*. The appellate court affirmed holding that the prior action did not contest the facts but disputed the right of the plaintiff to recover on those facts. It therefore did not matter whether the facts were established by extrinsic evidence upon issues joined or admitted by a motion to dismiss. In either case the decision was upon the merits.

So in the instant case, the dismissal by the Federal court upon a motion alleging failure to state a cause of action was an adjudication that no right to recover on the facts pleaded existed.

Federal procedure is even more stringent. In *Rinehart* v. *Locke* (7th Cir. 1971), 454 F.2d 313, in upholding a dis-

missal by the district court, the court of appeals held that under the Federal Rules of Civil Procedure, unless the district court specifies otherwise, a dismissal operates as an adjudication on the merits, except for dismissals for lack of jurisdiction, for improper venue, or for failure to join necessary parties.

We therefore hold that the district court's dismissal of Riley's suit was an adjudication on the merits and operates as a collateral estoppel on his counterclaim in the circuit court of Macon County, which was correct in dismissing it.

The final question is the propriety of summary judgment. Riley argues that issues of fact remain on questions of notice of trial, fair trial and the number of days upon which he crossed the picket line. The first two are moot by reason of collateral estoppel.

The record is in great confusion over the matter of days across the picket line. The original recommendation of the trial committee was "Fine of $64 per day for 100 days for a total of $6400 or less provided you present proof you worked less in which case $64.00 per day up to 100 days for each day worked." This appears to indicate that some proceeding for additional, or supplementary, proof was contemplated. However, the only provision found in the Union's constitution on the matter relates to appeals. Article 19 of that document provides in pertinent part: "The International Executive Board, in its discretion, may decide the appeal either on the record before it *or by retrial before it*." (Emphasis added.) Riley did file the appropriate notice of appeal.

The secretary-treasurer of the International Union responded by requesting Riley to submit "any documents, etc. that you may have in your defense." Riley replied: "My reasons for wanting the fine *dropped* are as follows:" (Emphasis added.) Then follows a list of six reasons, all

relating to matters other than the fine. No mention is made of abating a portion of the fine, only that the fine be "dropped."

The International Executive Board, so far as the record indicates, did not retry the case. There appears only a letter to Riley from the International Secretary-Treasurer stating that at a meeting of the International Executive Board Riley's appeal "was reviewed and discussed at length." The trial committee's recommendation was adopted except for a provision that Riley be "forever" barred from holding any elected or appointed union office was reduced to "a period of five (5) years."

Thereafter, the parties treated the fine as being in the amount of $6,400. In its motion for summary judgment the Union recited that figure as the fine and in his answer to the motion for summary judgment Riley did not dispute the amount but stated only "that the fine was unlawful."

It was not until he reached this court that Riley raised the question of the number of days upon which the fine was predicated by arguing that his deposition indicated something in the neighborhood of 80 days. In our judgment he has waived any such argument or contention. It was not raised in answer to the motion for summary judgment in the trial court and Riley did not pursue any intraunion remedies described above. Therefore, summary judgment was appropriate.

For all the foregoing reasons, the order of the circuit court of Macon County is affirmed.

Affirmed.

GREEN and MILLER, JJ., concur.

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

General No. 482-0506

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, BY SAMUEL J. WILLIAMS, as President, AND LONNIE E. WILLIAMS, as Financial Secretary-Treasurer,

Plaintiffs-Appellees,

vs.

ROBERT S. RILEY,

Defendant-Appellant.

Appeal from Circuit Court Macon County 81-LM-895
Donald W. Morthland, Judge Presiding

FOR APPELLANT
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RULE 23 ORDER FILED: March 17, 1983

JUSTICES: Honorable Albert G. Webber, III, P.J.
Honorable Frederick S. Green, J.
Honorable Ben K. Miller, J.
Concurring

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, being first duly sworn on oath, deposes and states that she served copies of the foregoing Petition for Leave to Appeal to the Supreme Court by mailing copies of same to:

Clerk of the Supreme Court of Illinois
Supreme Court Building — 15 copies
Springfield, Illinois 62701

Ronald A. Carpel, Ltd.
132 South Water Street
Suite 538 Milikin Court — 3 copies
P.O. Box 309
Decatur, Illinois 62525

on the 18th day of May, 1983, said copies to the Clerk of the Supreme Court being sent by overnight mail.

/s/ *Alexa Solomon*

SUBSCRIBED and SWORN to before
me this 18th day of May, 1983.

/s/ *J. Marlene Moen*
Notary Public

ABRAMS, GOMBERG & REESE, LTD.
135 S. LaSalle Street — Suite 2610
Chicago, Illinois 60603
(312) 372-1981

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

October 4, 1983

Mr. Barry A. Gomberg
Abrams, Gomberg & Reese, Ltd.
135 S. LaSalle St., S#2610
Chicago, IL 60602

No. 58430—International Union of Allied Industrial Workers of America, AFL-CIO, Local 876, etc., et al., etc., respondents, vs. Robert S. Riley, petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ *Juleann Hornyak*
Clerk of the Supreme Court

P. S. The Mandate of this Court will issue to the Appellate Court on October 26, 1983.

IN THE SUPREME COURT OF ILLINOIS

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, by SAMUEL J. WILLIAMS, as President, and LONNIE E. WILLIAMS, as Financial Secretary-Treasurer,

Plaintiff-Appellee

vs.

ROBERT S. RILEY,

Defendant-Appellant

Appeal from the Circuit Court of Macon County, Illinois
81 LM 895

Appeal from the Appellate Court of Illinois, Fourth Judicial District 4-82-0506

PETITION TO STAY OR RECALL MANDATE

(Filed Nov. 7, 1983)

NOW COMES the Defendant-Appellant, ROBERT S. RILEY, your Petitioner herein, and for his Petition to Stay or Recall Mandate pursuant to Illinois Supreme Court Rule 368, states as follows:

1. The Illinois Supreme Court in its order dated October 4, 1983, denied your Petitioner's Petition for Leave to Appeal to the Illinois Supreme Court, the above captioned cause.

2. Mandate to the Appellate Court of Illinois for the fourth judicial district issued on October 26, 1983.

3. Rule 58(2) of the Federal Rules of Civil Procedure in pertinent part reads as follows:

" . . . every judgment shall be set forth on a *separate document*. A judgment is effective *only when so set forth* . . ." (emphasis added).

4. No judgment set forth upon a separate document was ever entered in the cause:

ROBERT S. RILEY, v. ALLIED INDUSTRIAL WORKERS UNION OF AMERICA, LOCAL 876, and numbered 81-3216, which cause was filed on July 13, 1981.

5. No judgment having been set forth upon a separate document in said cause, there can be no final judgment to which the collateral estoppel doctrine can apply in Illinois Courts thus, the Illinois Circuit and Appellate Courts in applying said doctrine to the within action have committed clear and obvious error in a case in which no final judgment has ever been properly entered.

6. Since F.R.Civ.Pro. 58(2) is a jurisdictional rule, this issue may be raised at any time by any party, or by the Court *sua sponte*. Your petitioner herein, ROBERT S. RILEY, intends in good faith to Petition the United States Supreme Court for a Writ of Certiorari and has retained counsel therefor. Your petitioner herein, ROBERT S. RILEY, intends in good faith to move the United States District Court, Central District, Springfield Division for leave to file an amended complaint and has retained counsel therefore.

WHEREFORE, your petitioner, ROBERT S. RILEY, respectfully prays that this Court recall its mandate issued on October 26, 1983 to the Illinois Appellate Court for the Fourth Judicial District, or in the alternative, stay any and all proceedings or orders thereunder, until such time as the issues in this cause shall have been resolved by the United States District Court, Central District, Springfield Division or subsequent appeals therefrom, or until such time as the United States Supreme Court shall have

granted or denied the Writ of Certiorari for which ROBERT S. RILEY intends to Petition, and ruled upon its merits of said petition is granted, whichever is later.

Respectfully Submitted,

/s/ Barry A. Gomberg

ABRAMS, GOMBERG & REESE, LTD.

ABRAMS, GOMBERG & REESE, LTD.
135 South LaSalle Street
Suite 2610
Chicago, Illinois 60603
(312) 372-1981

PROOF OF SERVICE

(Filed November 7, 1983)

The undersigned, being first duly sworn on oath, deposes and states that she served copies of the foregoing Petition to Stay or Recall Mandate to the following:

Clerk of the Supreme Court of Illinois
Supreme Court Building — 15 copies
Springfield, Illinois 62701

Ronald A. Carpel, Ltd.
132 South Water Street
Suite 538 Milikin Court
P.O. Box 309
Decatur, Illinois 62525 — 3 copies

by depositing same in the United States Mail at 135 South LaSalle Street, at 5:00 p.m., on the 2nd day of November, 1983.

/s/ *Alexa Solomon*

SUBSCRIBED and SWORN to before me
this 2nd day of November, 1983.

/s/ *J. Marlene Moen*
Notary

ABRAMS, GOMBERG & REESE, LTD.
135 South LaSalle Street, Suite 2610
Chicago, Illinois 60603
(312) 372-1981

IN THE SUPREME COURT OF ILLINOIS

No. 58430

INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, LOCAL 876, by SAMUEL J. WILLIAMS, as President, and LONNIE E. WILLIAMS, as Financial Secretary-Treasurer,

Plaintiff-Appellee

vs.

ROBERT S. RILEY,

Defendant-Appellant

Appeal from the Circuit Court of Macon County
Honorable Donald W. Morthland, Judge Presiding
No. 81 LM 895

Appeal from the Appellate Court of Illinois
Fourth Judicial District
Honorable Justice Webber, Judge Presiding
No. 4-2-0506

SUGGESTIONS IN SUPPORT OF DEFENDANT-APPELLANT'S PETITION TO STAY OR RECALL MANDATE

(Filed November 7, 1983)

INTRODUCTION

The Defendant-Appellant, ROBERT S. RILEY, respectfully petitions the Illinois Supreme Court to stay or recall its mandate issued on October 26, 1983 for the reasons stated hereinbelow, and submits this brief in support thereof.

This Appeal is from an Order of the Circuit Court of Macon County which dismissed with prejudice his Amended

Counter-Claim and entered Summary Judgment in favor of the Plaintiff. The Appellate Court of Illinois for the Fourth District affirmed. Robert Riley's Petition for a Rehearing, filed on April 6, 1983, was denied April 14, 1983 by the same Court. The Illinois Supreme Court denied on October 4, 1983 Robert Riley's Petition to Appeal to the Illinois Supreme Court. Its mandate pursuant to rule, issued October 26, 1983.

The facts of this case have been set forth previously in Robert Riley's Petition to Appeal to the Illinois Supreme Court and he therefore relies on that statement of the facts for his Petition.

The issues presented by this Petition to stay or recall the mandate of the Illinois Supreme Court arise from the grounds upon which Robert Riley relies in submitting this Petition to the Illinois Supreme Court, namely: 1) his good faith intention to apply to the United States Supreme Court for a Writ of Certiorari, and his having employed counsel therefor; 2) a clear and obvious error by the Circuit Court in applying collateral estoppel from a United States District Court in which no judgment was ever properly entered; and 3) Robert Riley's good faith intention to move the United States District Court, Central District, Springfield Division for leave to file an amended complaint and his employment of counsel therefor.

ARGUMENT

A. Because the Defendant, Robert Riley, in good faith intends to apply to the United States Supreme Court to review his case, the Illinois Supreme Court may and under the circumstances should, pursuant to its Rule No. 368(c) stay or recall its mandate.

Illinois Supreme Court Rule 368(c) provides in pertinent part as follows:

> ". . . In cases in which review by the Supreme Court of the United States may be sought, the Court whose decision is sought to be reviewed or a judge thereof, and in any event the Supreme Court of Illinois or a judge thereof, may stay or recall the mandate, as may be appropriate."

Robert Riley has retained the firm of Abrams, Gomberg & Reese, Ltd., to Petition the Supreme Court of the United States for a Writ of Certiorari so that the decision of the Supreme Court of Illinois, which by its effect deprives him of certain federally protected rights by the misapplication of procedural rules, can be reviewed. Robert Riley in good faith intends to apply to the United States Supreme Court for a Writ of Certiorari, and his employment of counsel therefor underscores this intention. Since the Illinois Supreme Court may, in appropriate circumstances, stay or recall its mandate when an appeal to the United States Supreme Court is likely, Ill.S.Ct. Rule No. 368(c), the petitioner herein contends that his is an appropriate case for a recall or stay of the mandate because of his intention to appeal to the United States Supreme Court and for the following reasons.

B. Since under F.R.Civ.Pro. 58(2) no effective judgment has been entered against Robert Riley, he has additional remedies available which he in good faith intends to pursue, further adding to the appropriateness in this case of recalling or staying the Illinois Supreme Court's Mandate.

Rule 58(2) of the Federal Rules of Civil Procedure provide in pertinent part as follows:

> ". . . Every judgment shall be set forth on a *separate document*, a judgment is effective *only when so set forth* . . ." (Emphasis added)

Appendix I to this brief consists of a true and correct copy of the docket sheet for the case of *Robert S. Riley* v. *Allied Industrial Workers Union of America*, U.S. Dist. Ct. No. 81-3216 ("*Riley* v. *Allied*"). All the documents filed in that case are numbered serially in the second column. No separate document was ever filed in *Riley* v. *Allied*. Consequently, there is no separate document entitled "judgment" listed in the docket sheet. The only record available of the U.S. District Court's disposition of the case is the docket entry of 12-7-81. A mere docket entry under 58(2) does not qualify as a "separate document".

That a mere docket entry does not qualify as a "separate document" is clear from the language of Rule 58. It requires that *first* the Court approve the form of the judgment submitted to it and *then* that the clerk enter the judgment upon the docket:

> ". . . the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it . . . A judgment is effective only when so set forth *and* when entered as provided in Rule 79(a). F.R.Civ.Pro. 58(2)" (emphasis added)

An effective judgment becomes such only through a two step process: *first*, when set forth upon a separate document; *second*, when entered pursuant to F.R.Civ.Pro. 79(a). The case law is overwhelmingly in accord with this interpretation. *Conrad* v. *Medina*, D.C. Mun.App. 1946, 47 A.2d 562, (Prior to the adoption of this rule, federal courts considered entry of a judgment as a ministerial duty, the lack of which did not affect the validity of the judgment for most purposes). *Taylor* v. *Sterrett*, CA Tex 1976, 527 F.2d 856, (This rule is to mechanically applied). *Virgin Islands National Bank* v. *Tropical Ventures Inc.*, D.C. Virgin Islands 1973, 358 F.Supp. 1203, (Judicial entry of judgment

is the norm rather than entry by the clerk, and departure from the norm is narrowly restricted.) *Levin* v. *Wear-Ever Aluminum, Inc.* C.A. Pa. 1970, 427 F.2d 847, (Provisions requiring every judgment to be set forth on a separate document and entered on a docket of the court are mandatory in all cases). *Associated Press* v. *Taft-Ingalls Corp.*, C.A. Ohio 1963, 323 F.2d 114, (Judgment signed by the Court is a "prima facie" judgment in a case rather than a memorandum opinion or docket entry). *Scola* v. *Boat Frances, R., Inc.*, C.A. Mass. 1980, 618 F.2d 147, (An appealable, final decision or judgment must be set forth upon a separate document distinct from the jury verdict or non-jury decision by the Court). *Sasson* v. *U.S.*, C.A. Ga. 1977, 549 F.2d 983, (This rule requires a judgment separate and apart from an accompanying opinion).

The purpose of this rule is to clarify when the time for appeal begins to run. *Bankers Trust Co.* v. *Mallis*, N.Y. 1978, 98 S.Ct. 1117, 435 U.S. 381, 55 L.Ed. 357, rehearing denied 98 S.Ct. 2259, 436 U.S. 915, 56 L.Ed.2d 416; *Scola* v. *Boat Frances R., Inc.*, op. cit. For this reason, an order tacked onto the end of an opinion will not qualify as a "separate document". *Caperton* v. *Beatrice Pocahontas Coal Co.*, C.A. Va. 1978, 585 F.2d. 683; *Taylor* v. *Sterrett*, op. cit. Consequently, the absence of any separate document setting forth a judgment, except for an unsigned transcript of the court's oral opinion, constitutes a deviation from the requirements of this rule. *W.G. Cosby Transfer and Storage Corp.* v. *Frochlke*, C.A. Va. 1973, 480 F.2d 498.

The consequences of failure to comply with this rule are consistent with its rationale. Failure to comply is grounds for dismissing an appeal for lack of appellate court jurisdiction. *Nanez* v. *Superior Oil Co.*, C.A. La. 1976, 535 F.2d 324; *Taylor* v. *Sterret*, op. cit.; *Moore* v. *St. Louis Music Supply Co, Inc.*, C.A. Mo. 1975, 526 F.2d. 801;

Chicago Housing Tenants Organization, Inc. v. *Chicago Housing Authority*, C.A. Ill. 1975, 512 F.2d 19. Thus, F.R.Civ.Pro. 58(2) is a jurisdictional rule. Jurisdictional issues may be raised at any time by any party or by the Court *sua sponte*.

The conclusion that there was no judgment on the U.S. District Court is inescapable. The rule is mandatory in all cases and is to be mechanically applied. Consequently, and since F.R.Civ.Pro. is a jurisdictional rule, this issue may be raised at any time by any party or *sua sponte* by the Court. Since only the docket entry exists to show the U.S. District Court's disposition of the case, and since a docket entry does not qualify as a "separate document", no judgment exists which would support a theory of collateral estoppel. Without a judgment, collateral estoppel cannot apply. Clear and obvious error has occurred, the effect of which is to, by state procedural means, deprive Robert Riley of his federally protected rights. The Supreme Court of the United States has clearly stated in *Dice* v. *Akron, Canton* v. *Youngstown Railroad Co.*, (1952), 342 U.S. 359, 72 S.Ct. 312, 96 L.Ed. 398 that it will not permit state procedural law to deprive a United States' citizen of his federally protected rights.

While the error in applying collateral estoppel in State Court will be raised before the U.S. Supreme Court (if Certiorari is granted), Robert Riley also intends to pursue the counter-claim he raised in the Circuit Court of Illinois as a claim again in the U.S. District Court on the grounds just set forth. Thus, while Riley is pursuing his remedies in the U.S. District Court, it would be appropriate for the Illinois Supreme Court to recall or stay its mandate so that Robert Riley may have the opportunity to have his claim (his counter-claim in Illinois State Courts) finally heard and adjudicated.

CONCLUSION

Robert Riley has been deprived of his rights protected by the Labor Management Relations Disclosure Act. He has asserted these rights, first in a federal forum where no judgment was ever properly entered. When sued by his Union in the Illinois Courts, he raised as a counterclaim those same rights which were never finally adjudicated by the U.S. District Court. The Illinois Courts, without a judgment which would support the doctrine, nevertheless applied collateral estoppel to Robert Riley's counterclaim, a clear and obvious error. The Illinois Court, in applying its own law on when judgments are "final", rather than the federal law, by procedural means deprived Robert Riley of his federally protected rights.

Robert Riley now seeks to have the United States Supreme Court review the treatment his federal rights received in the Illinois Courts. He also seeks to enforce the federal procedural law on judgments in both the U.S. District Court and before the United States Supreme Court. Whether or not he will ultimately prevail cannot be known. Under these circumstances, a stay or recall of the Illinois Supreme Court's Mandate can only be described as appropriate. For these good and excellent reasons, Robert Riley petitions and believes that this Court should stay or recall its mandate.

Respectfully Submitted:

/s/ Barry A. Gomberg

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DOCKET SHEET

7/13/81	Complaint
7/13/81	Summons w/USMarshal Form and one copy issued to USMarshal for service.
7/17/81	SUMMONS, ret. exec. on International Union, cert. mail by USM 7/16/81.
8/ 3/81	(Deft.) MOTION TO DISMISS.
8/ 3/81	(Deft.) MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO DISMISS.
8/ 3/81	(Deft.) MOTION TO STRIKE.
8/ 6/81	(Deft.) MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO STRIKE.
8/14/81	(Deft.) AMENDMENT To Defendant's Memorandum In Support Of Motion To Dismiss.
8/22/81	Clerk to notify Atty. for pltf. of the requirements of Local Rule 12. Rule on pltf. to file response within seven (7) days. Failure to do so will be taken as a confession of the pending Motions. (Ackerman, J.) Copy of d/e mailed to parties w/copy Local Rule 12.
8/31/81	Letter from Atty. Murray B. Woolley, counsel for pltf. request extension of time to and including Sept. 4, 1981.
9/ 1/81	Letter from Atty. Ronald L. Carpel, counsel for deft. in opposition to pltfs. letter requesting extension of time.
9/ 1/81	Although the point made by Atty. Carpel in his letter in opposition is not without merit, nevertheless the Court ALLOWS this Motion to extend time to and including Sept. 4, 1981. (Ackerman, J.) Copy of d/e mailed to parties.

9/ 4/81 (Pltf.) ANSWER To Motion To Dismiss.

9/ 4/81 MEMORANDUM IN SUPPORT Of The Plaintiff's Opposition To The Defendant's Motion To Dismiss.

9/ 4/81 (Pltf.) ANSWER To Defendant Union's Motion To Strike.

9/ 4/81 MEMORANDUM IN OPPOSITION To Defendant's Motion To Strike.

9/14/81 Hearing on all pending motions set for Tuesday, November 10, 1981 at 2:30 p.m. Atty. Carpel to notify parties.

11/10/81 Notice of Hearing.

11/10/81 Cause called for hearing on all pending motions. Attorney Ronald Carpel appears for defendants. No one appears for plaintiff. Attorney Murray Woolley contacted telephonically by the Court. Attorney Woolley said he received notice of the hearing, could not appear and stands on his memos already filed. Arguments of Defendant attorney heard. Leave granted to counsel for the defendant to file a copy of the union constitution as part of the record. Leave granted to counsel for the defendant to file Plaintiff's deposition in support of his motion to dismiss. Ruling reserved at this time. Rule on Plaintiff to respond if desired in accordance with Rule 12 and Rule 56, F.R. C.P., within 21 days. (Ackerman, J.)
Docket entry mailed to attorneys.

11/10/81 Deposition of Robert Riley taken Sept. 8, 1981, filed.

12/ 7/81 The Court has again examined file. Atty. for pltf. has not filed any further response to deft's motion to dismiss. It appears that said motion is well taken and therefore this case must be dismissed. CAUSE DISMISSED. (Ackerman, J.) Copy of d/e mailed to parties.

12/ 7/81 CASE CLOSED.

PROOF OF SERVICE

The undersigned, being first duly sworn on oath, deposes and states that she served copies of the foregoing Brief In Support of Defendant-Appellant's Petition to Stay or Recall Mandate to the Supreme Court by mailing copies of same to:

Clerk of the Supreme Court of Illinois
Supreme Court Building — 15 copies
Springfield, Illinois 62701

Ronald A. Carpel, Ltd.
132 South Water Street
Suite 538 Milikin Court — 3 copies
P.O. Box 309
Decatur, Illinois 62525

on the 1st day of November, 1983.

/s/ *Alexa Solomon*

SUBSCRIBED and SWORN to before
me this 1st day of November, 1983.

/s/ *Signature Illegible*
Notary

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(312) 372-1981

NO. 58430

IN THE
SUPREME COURT OF ILLINOIS

International Union of Allied Industrial Workers of America, AFL-CIO, Local 876, etc., et al., etc.,

Respondents,

vs.

Robert S. Riley,

Petitioner.

Appeal from the Appellate Court, Fourth District
4-82-0506 — 81-LM-895

ORDER

(Filed November 15, 1983)

This matter has come for consideration upon the motion of petitioner to stay the mandate of this Court pending application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of an application for *certiorari* or the expiration of the period within which said application may be filed. If *certiorari* is applied for, the mandate of this Court shall, upon proof of such application being made by affidavit filed with the Clerk of this Court, be stayed pending resolution of the United States Supreme Court of such application. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which *certiorari* may be sought.

JH/dem

END OF DOCKET